

CA Final Indirect taxes

Flow charts Nov 2018 exams

(Amended as per Finance Act 2017)

Circulars and notifications up to 31.05.2018)

(Also useful for CWA/CS)

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Latest Amendment are highlighted with red colour

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Read and Understand the concept and work out some problems in study material

Numerical problems will be asked from the topics of

SN	GST	Customs
1	Basic Concepts and GST Calculation	Basic concepts
2	Exempted services from GST	Valuation
3	Input tax edibility and GST Calculation	Duty drawback
4	Time and place of supply of goods and Services	baggage
5	Valuation inclusions and exclusion	
6	Composition scheme eligibility and turnover limit calculation	
7		

Additional reading suggested.

1. ICAI Study material problems
2. RTP Nov 2018

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GST Basics and Introduction

Concept of GST

- ❖ GST is a **value added tax** levied on manufacture, sale and consumption of goods and services
- ❖ GST Provides **comprehensive and continuous chain of tax credits** from the producer/Service provider up to retail level /Consumer level.
- ❖ Each person will get credit for the taxes paid at earlier stage. The consumer will bear the final tax.
- ❖ Since, only the value added at each stage is taxed under GST, there is no tax on tax or cascading of taxes under GST system
- ❖ GST does not differentiate between goods and services and thus, the two are taxed at a single rate.

Need for GST in India

- ❖ Concept of one nation, one tax, and one market.
- ❖ Compete with global market as many nations are following GST regime
- ❖ Deficiency in earlier indirect tax system:
- ❖ Cenvat credit of excise and service tax is not available to retailer and vat dealers
- ❖ Central excise is includible in value for vat calculation resulting double tax.
- ❖ CST credit is not available for dealers.
- ❖ Difficulty in distinguish between goods and services especially in case of intellectual properties, drawings and designs, Restaurant services, software and work contract

GST Common Portal

- ❖ Common GST Electronic Portal – **www.gst.gov.in** – a website managed by Goods and Services Network (GSTN) [
- ❖ GSTN is a company incorporated under the provisions of section 8 of the Companies Act, 2013. It has been set up by the Government to establish a uniform interface for the tax payer and a common and shared IT infrastructure between the Centre and States.
- ❖ The GST portal is accessible over Internet (by taxpayers and their CAs/Tax Advocates etc.) and Intranet by Tax Officials etc.
- ❖ The portal is one single common portal for all GST related services.
- ❖ A common GST system provides linkage to all State/ UT Commercial Tax Departments, Central Tax authorities, Taxpayers, Banks and other stakeholders.
- ❖ The eco-system consists of all stakeholders starting from taxpayer to tax professional to tax officials to GST portal to Banks to accounting authorities.
- ❖ Primarily, GSTN provides three front end services to the taxpayers namely registration, payment and return through GST Common Portal.
- ❖ The functions of the GSTN include:
 - o facilitating registration;
 - o forwarding the returns to Central and State authorities;
 - o computation and settlement of IGST;
 - o Matching of tax payment details with banking network;
 - o Providing various MIS reports to the Central and the State Governments based on the taxpayer return information;
 - o Providing analysis of taxpayer's profile; and running the matching engine for matching, reversal and reclaim of input tax credit

Taxes subsumed in GST

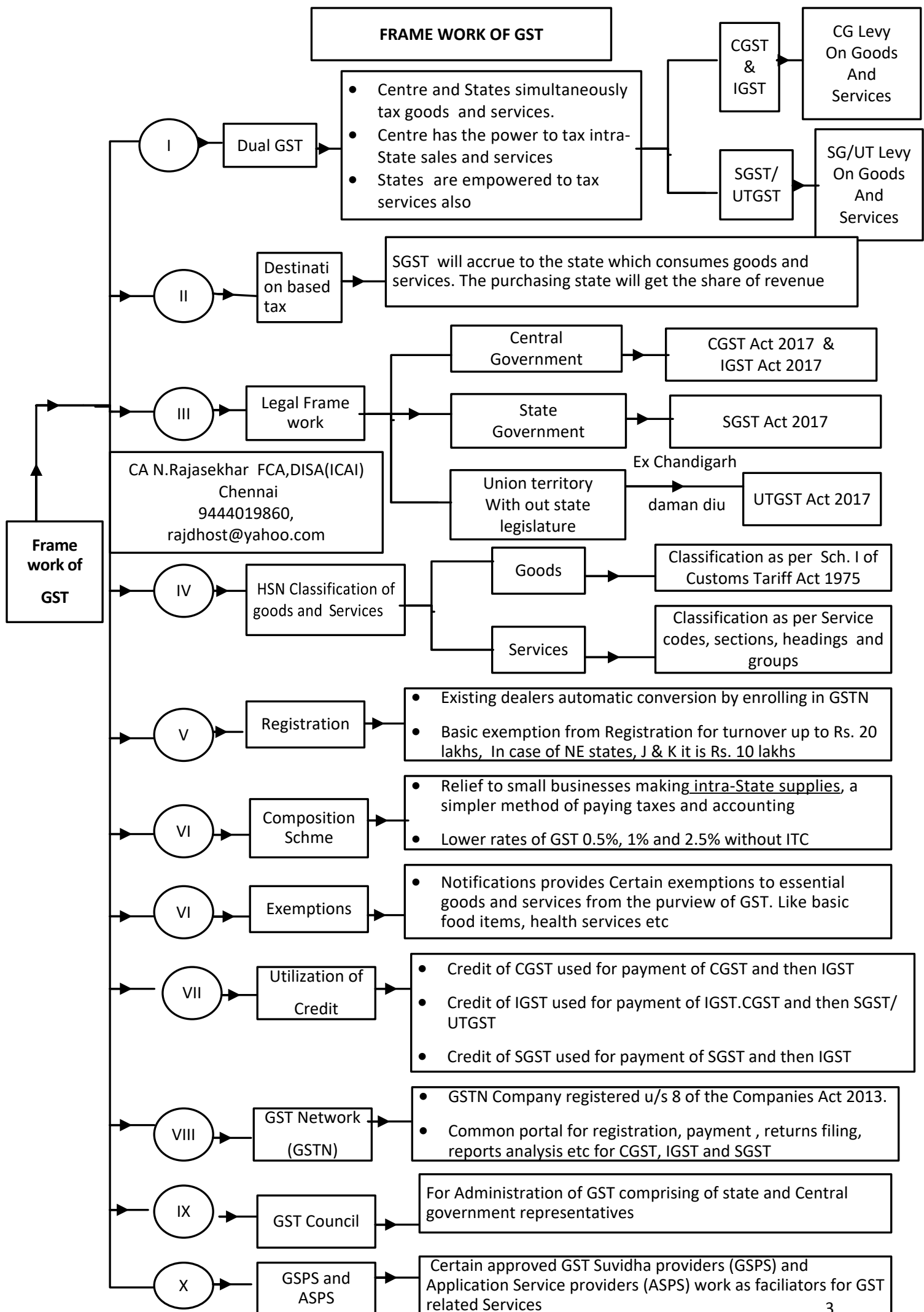
SN	Central taxes	SN	State taxes
1	Central excise	1	Sales tax/Vat
2	Additional excise duties	2	Luxury tax
3	Excise duty on medical and toilet preparations Act	3	Tax on Advertisement
4	Service tax	4	Purchase tax
5	Counter vailing duty	5	Entry tax/octroi
6	Special counter vailing duty (SAD 4%)	6	Tax on lottery, betting and gambling
7	Central sales tax	7	Surcharge and cess relating to goods and Services
8	Surcharge and cess relating to goods and Services	8	

Taxes continue to remain after GST

- ❖ Central excise on petroleum products
- ❖ State Central excise duty on alcoholic liquor for human consumption
- ❖ State vat on petroleum products
- ❖ Custom duty on imports (BCD and safe guard duties)

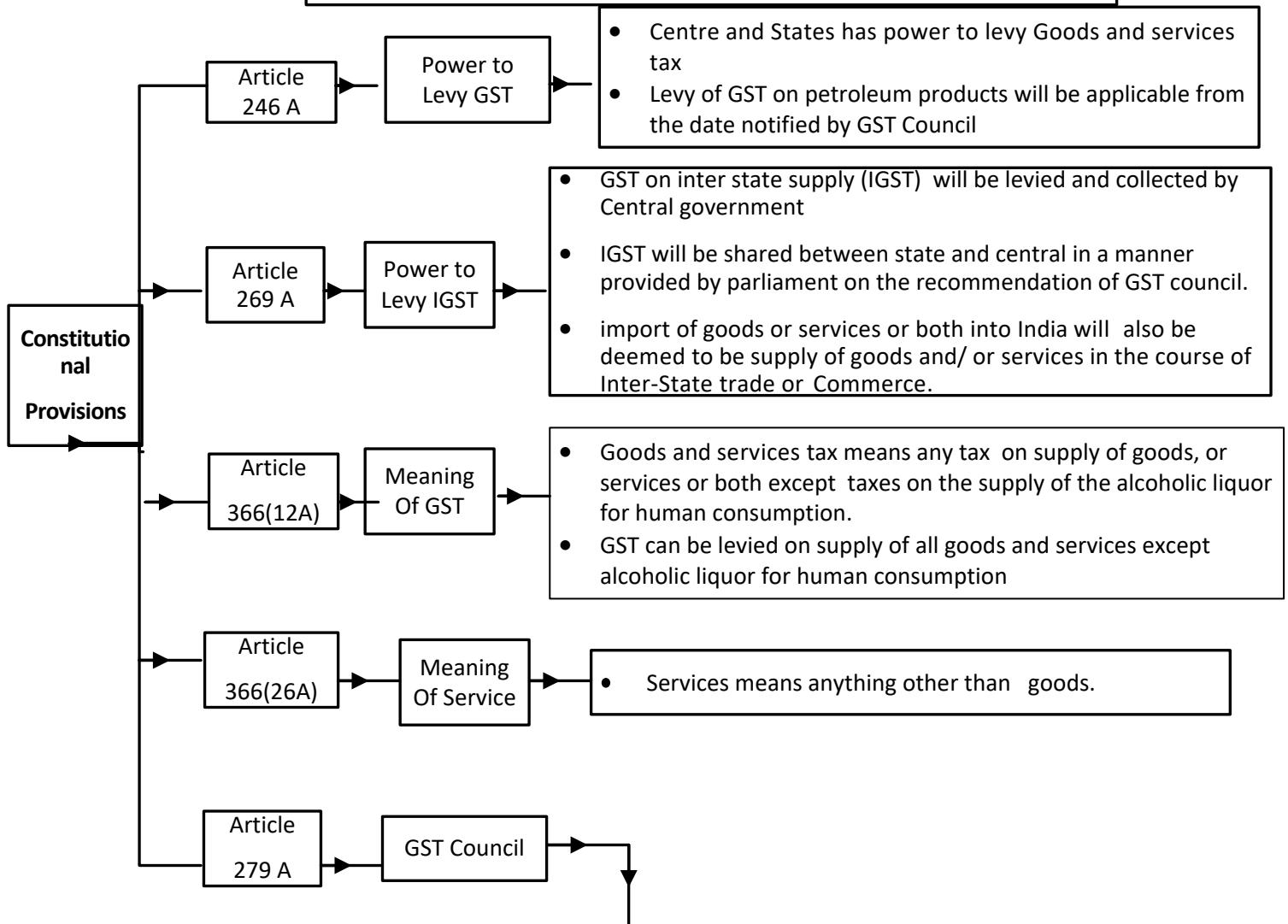
BENEFITS OF GST

- ❖ GST brings benefits to all the stakeholders of industry, Government and the consumer. It will lower the cost of goods and services, give a boost to the economy and make the products and services globally competitive.
- ❖ Creation of unified national market:
 - ST aims to make India a common market with common tax rates and procedures and remove the economic barriers thus paving the way for an integrated economy at the national level.
- ❖ Mitigation of ill effects of cascading:
 - By subsuming most of the Central and State taxes into a single tax and by allowing a set-off of prior-stage taxes for the transactions across the entire value chain, it would mitigate the ill effects of cascading, improve competitiveness and improve liquidity of the businesses.
- ❖ Elimination of multiple taxes and double taxation:
 - GST has subsumed majority of existing indirect tax levies both at Central and State level into one tax i.e., GST which is leviable uniformly on goods and services. This will make doing business easier and will also tackle the highly disputed issues relating to double taxation of a transaction as both goods and services.
- ❖ Boost to 'Make in India' initiative:
 - GST will give a major boost to the 'Make in India' initiative of the Government of India by making goods and services produced in India competitive in the national as well as international market.
- ❖ Buoyancy to the Government Revenue:
 - GST is expected to bring buoyancy to the Government Revenue by widening the tax base and improving the taxpayer compliance.

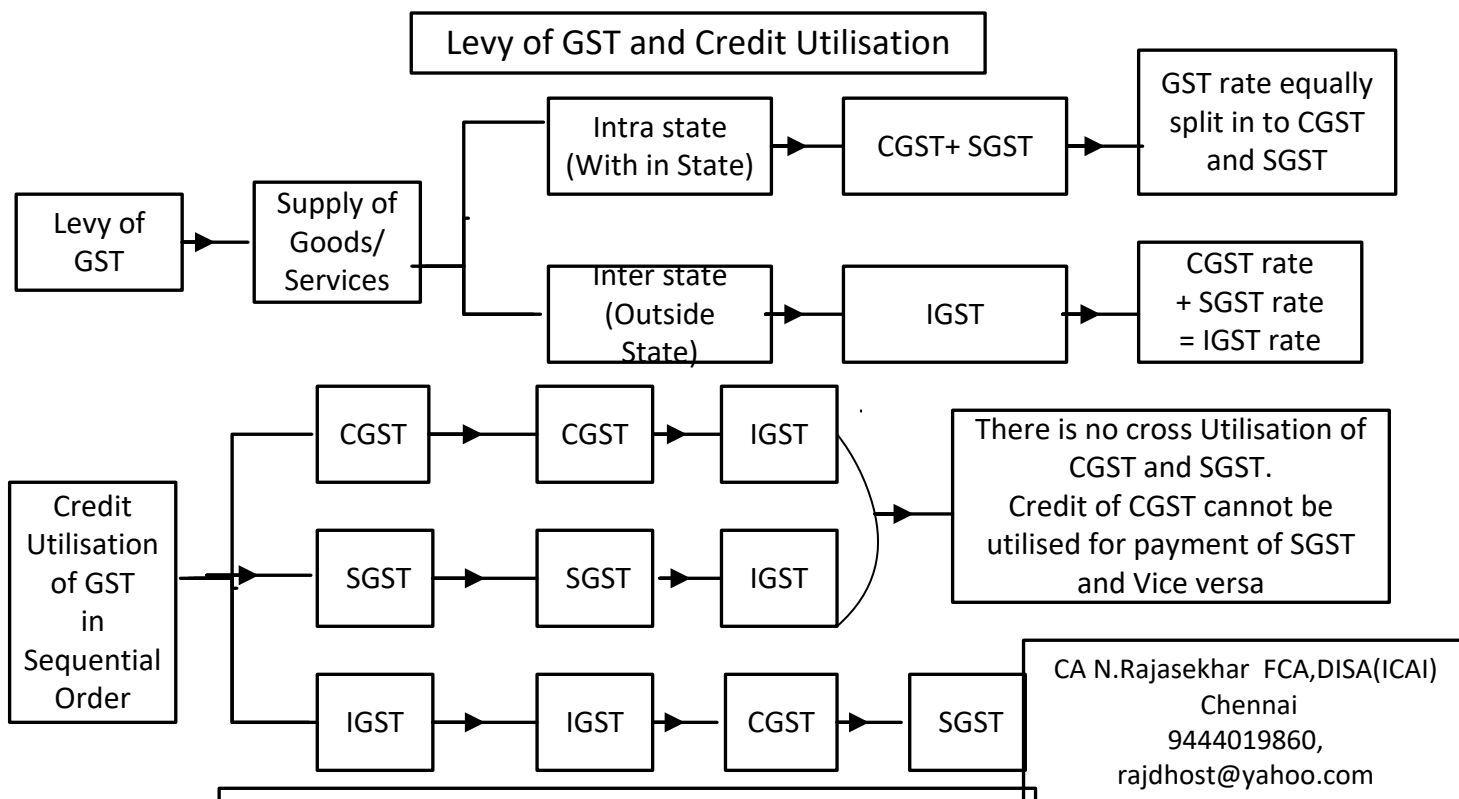


- Introduction of GST is biggest indirect tax reform since independence.
- There is no provision for levy of GST in the Constitution and hence Levy of GST need Constitutional amendment
- The Constitution amendment Bill 2014 was passed in Lok Sabha on 6th May 2015 and on the Rajya Sabha on 3rd August 2016. The bill was subsequently ratified by more than 50% of State legislatures. Finally, Constitution 101st(Amendment) Act, 2016 received the president assent on 08.09.2016.
- The central legislations of GST were passed in parliament and finally received the assent of President on 12th April 2017. State GST laws are also passed by the state legislatures passed and pave way for levy of GST.

GST Constitutional provisions 101(-Constitutional amendment)Act 2016



1	President to constitute a joint forum of the Centre and States namely, Goods & Services Tax Council (GST Council).
2	The provisions relating to GST Council came into force on 12 th September 2016. President constituted the GST Council on 15th September, 2016.
3	The Union Finance Minister is the Chairman of this Council and Ministers in charge of Finance/Taxation or any other Minister nominated by each of the States & UTs with Legislatures are its members.
4	The Union Minister of State in charge of Revenue or Finance is also its member.
5	The function of the Council is to make recommendations to the Union and the States on important issues like tax rates, exemptions, threshold limits, dispute resolution etc.
6	It shall also recommend the date on which GST be levied on petroleum crude, high speed diesel, motor spirit, natural gas and aviation turbine fuel.
7	Every decision of the GST Council is taken by a majority of not less than three-fourths of the weighted votes of the members present and voting. Vote of the Centre has a weightage of one-third of total votes cast and votes of all the State Governments taken together has a weightage of two-thirds of the total votes cast, in that meeting.



Illustrations on CGST and SGST Calculation

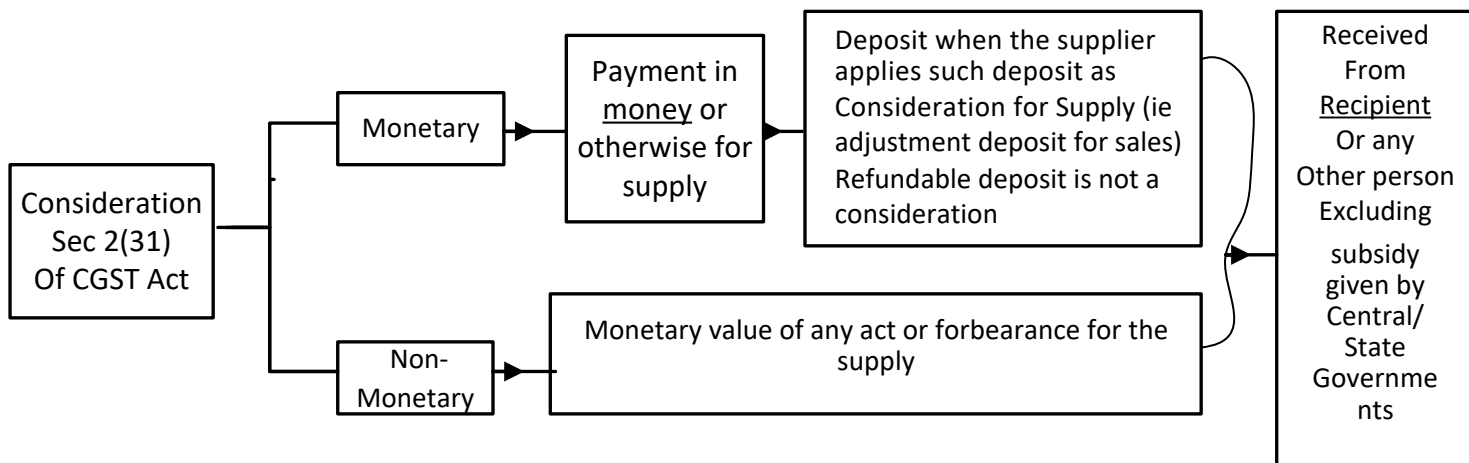
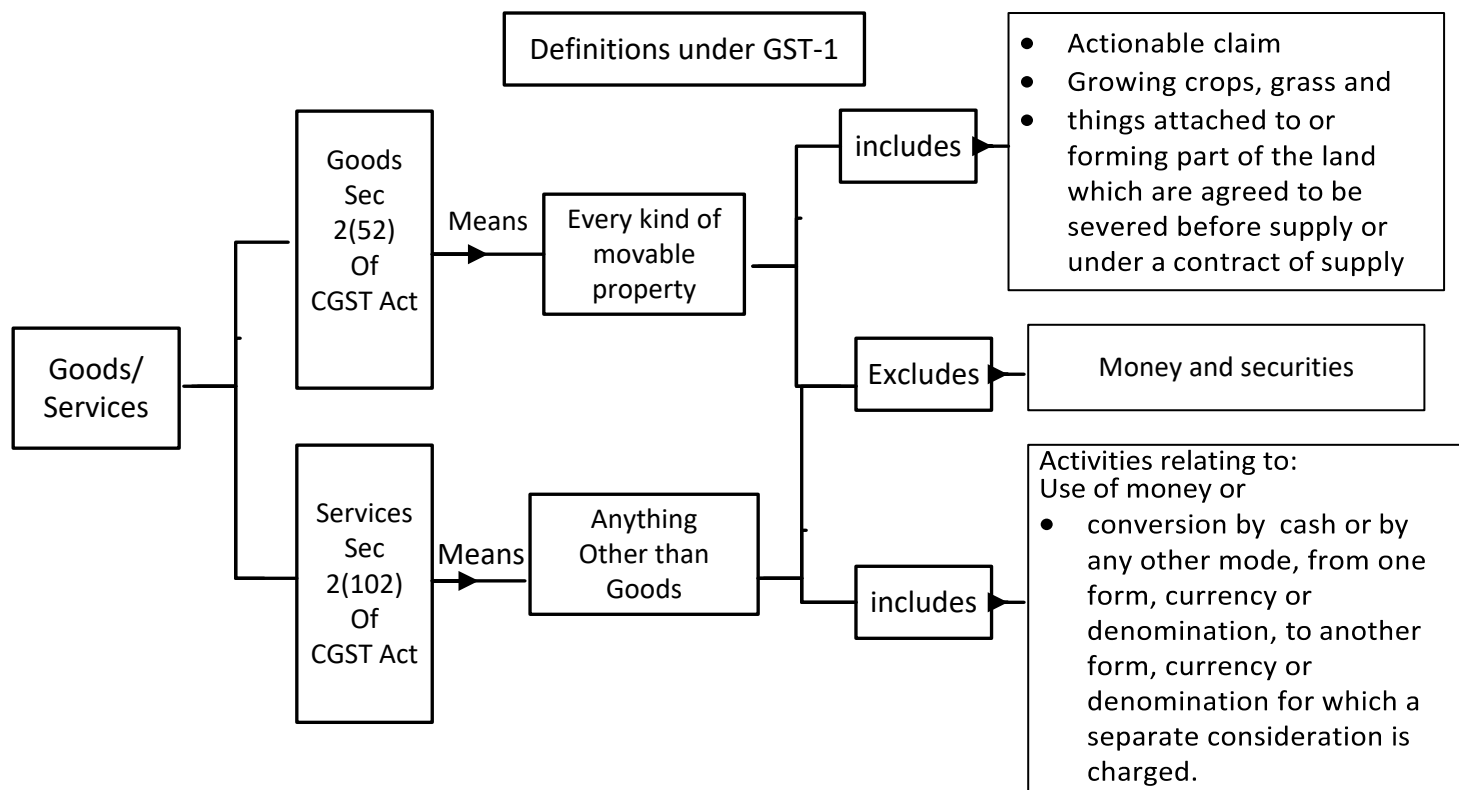
1. Supply of goods and services with in state

Mr. A supplies goods/Services to B with in the same state. Assume GST rate 18%	
Particulars	Amount (in Rs.)
Value charged for supply of goods/ services	10,000
Add: CGST @ 9%	900
Add: SGST @ 9%	900
Total price charged by A to B for local supply of goods/ services	<u>11,800</u>
Mr. A pays CGST Rs. 900 and SGST Rs. 900/- to Govt. He is the first seller and will not get any credit	
Mr. B supplies the same goods/Services to C with in the same state. Assume GST rate 18%	
Particulars	Amount (in Rs.)
Value of goods/ services purchased from A	10,000
Add: Value addition- 30% (profit and overheads)	3,000
Value of goods	13,000
Add: CGST @ 9%	1,170
Add: SGST @ 9%	1,170
Total price charged by B to C for local supply of goods/ services	<u>15,340</u>
Computation of GST payable by B to the Government	
CGST payable	1170
Less: Credit of CGST	<u>900</u>
CGST payable to Central Government	<u>270</u>
SGST payable	1170
Less: Credit of SGST	<u>900</u>
SGST payable to State Government	<u>270</u>

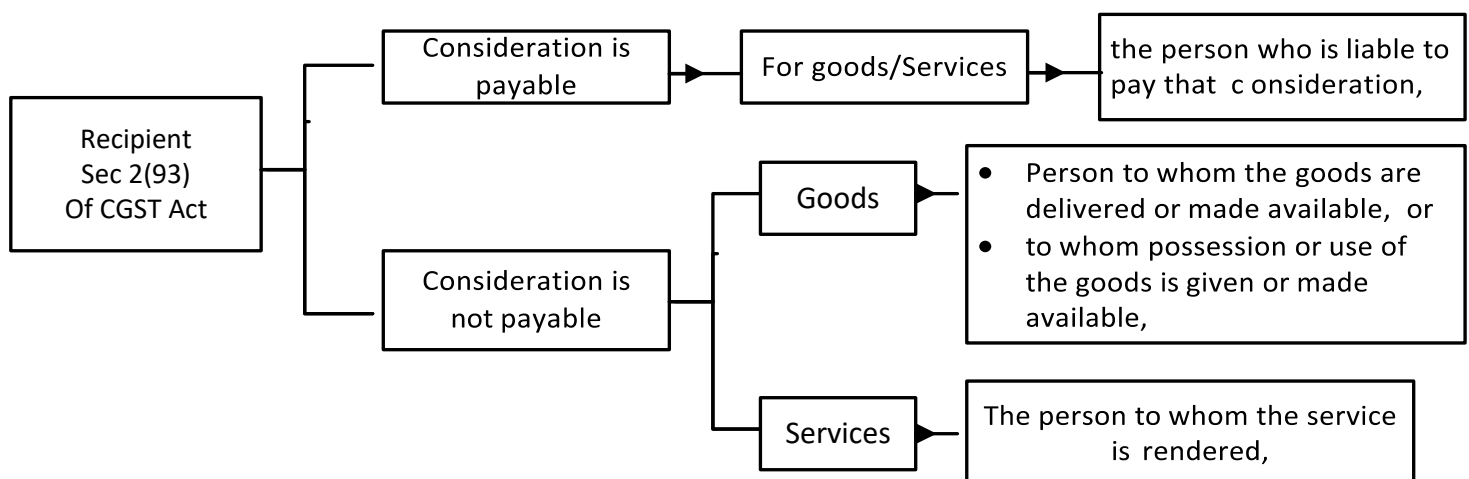
1. Supply of goods and services outside state (interstate supply)

Mr. X supplies goods/Services to Y with in the same state. Assume GST rate 18%	
Particulars	Amount (in Rs.)
Value charged for supply of goods/ services	10,000
Add: CGST @ 9%	900
Add: SGST @ 9%	900
Total price charged by X to Y for local supply of goods/ services	<u>11,800</u>
Mr. X pays CGST Rs. 900 and SGST Rs. 900/- to Govt. He is the first seller and will not get any credit	

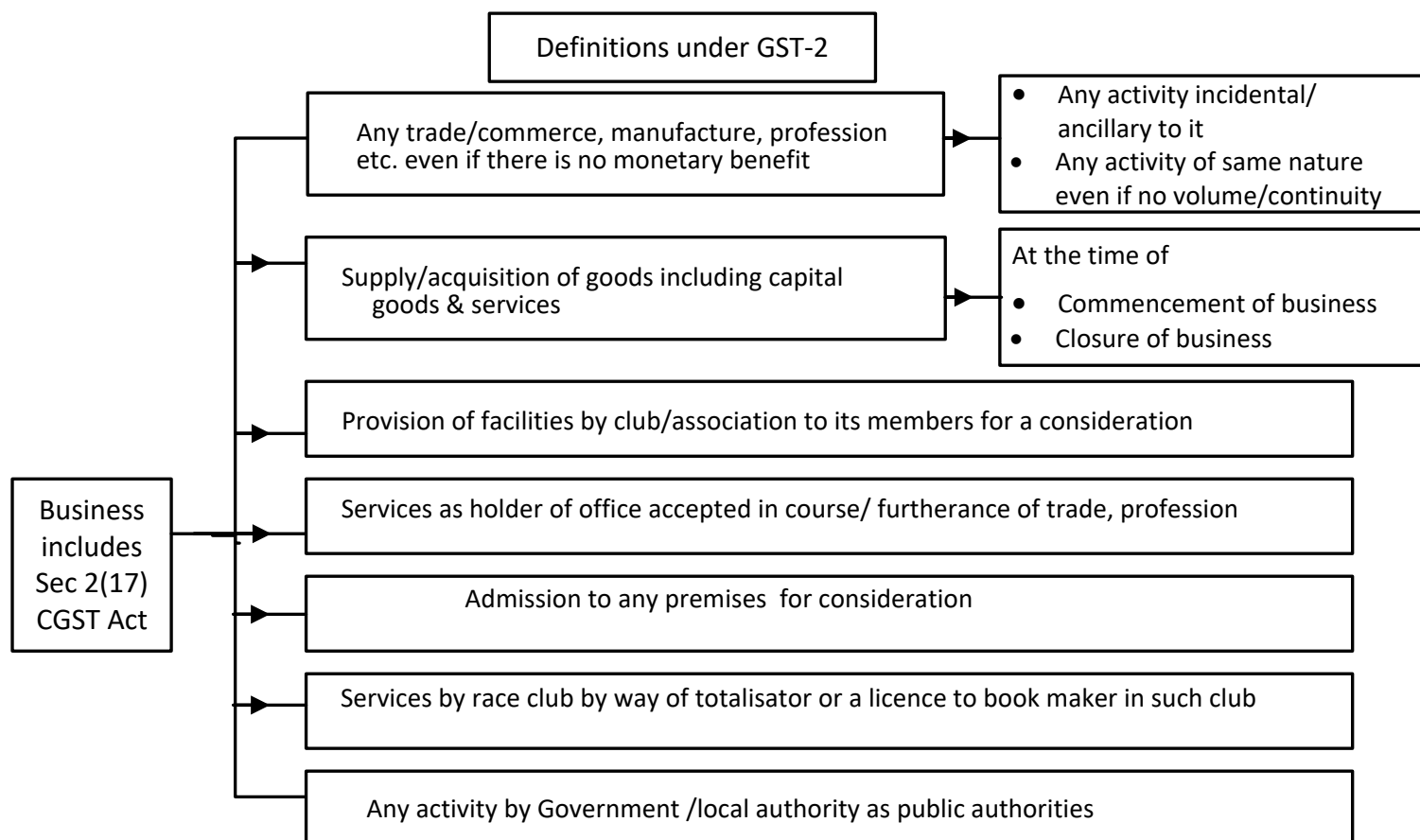
Mr. Y supplies the same goods/Services to Z in another state. Assume GST rate 18%	
Particulars	Amount (in Rs.)
Value of goods/ services purchased from A	10,000
Add: Value addition- 30% (profit and overheads)	3,000
Value of goods	13,000
Add: IGST @ 18%	2,340
Total price charged by Y to Z for Interstate supply of goods/ services	15,340
Computation of IGST payable by Y to the Government	
IGST payable	2340
Less: Credit of CGST	<u>900</u>
Less: Credit of SGST	<u>900</u>
IGST payable to Central Government	<u>540</u>



Money: means the Indian legal tender or any foreign currency, cheque, promissory note, bill of exchange, letter of credit, draft, pay order, traveller cheque, money order, postal or electronic remittance or any other instrument recognised by the Reserve Bank of India when used as a consideration to settle an obligation or exchange with Indian legal tender of another denomination but shall not include any currency that is held for its numismatic value [Section 2(75) of CGST Act]



Person include an agent acting as such on behalf of the recipient in relation to the goods or services or both supplied.



Manufacture: means processing of raw material or inputs in any manner that results in emergence of a new product having a distinct name, character and use and the term “manufacturer” shall be construed accordingly [Section 2(72) of CGST Act].

Taxable supply: means a supply of goods or services or both which is leviable to tax under this Act [Section 2(108) of CGST Act].

Taxable territory: means the territory to which the provisions of this Act apply [Section 2(109) of CGST Act]

India including J & K. GST is applicable to J & K also.

Supplier: in relation to any goods or services or both, shall mean the person supplying the said goods or services or both and shall include an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied [Section 2(105) of CGST Act]

E-Commerce operator: means any person who owns, operates or manages digital or electronic facility or platform for electronic commerce. [Section 2(45) of CGST Act]

Exempt supply: means supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax under section 11, or under section 6 of the Integrated Goods and Services Tax Act, and includes non-taxable supply [Section 2(47) of CGST Act].

Reverse charge: means the liability to pay tax by the recipient of supply of goods or services or both instead of the supplier of such goods or services or both under section 9(3)/9(4), or under section 5(3)/5(4) of the IGST Act [Section 2(98) of CGST Act].

Non-taxable supply: means a supply of goods or services or both which is not leviable to tax under CGST Act or under IGST Act. [Section 2(78) of CGST Act]

Taxable person: means a person who is registered or liable to be registered under section 22 or section 24. [Section 2(107) of CGST Act]

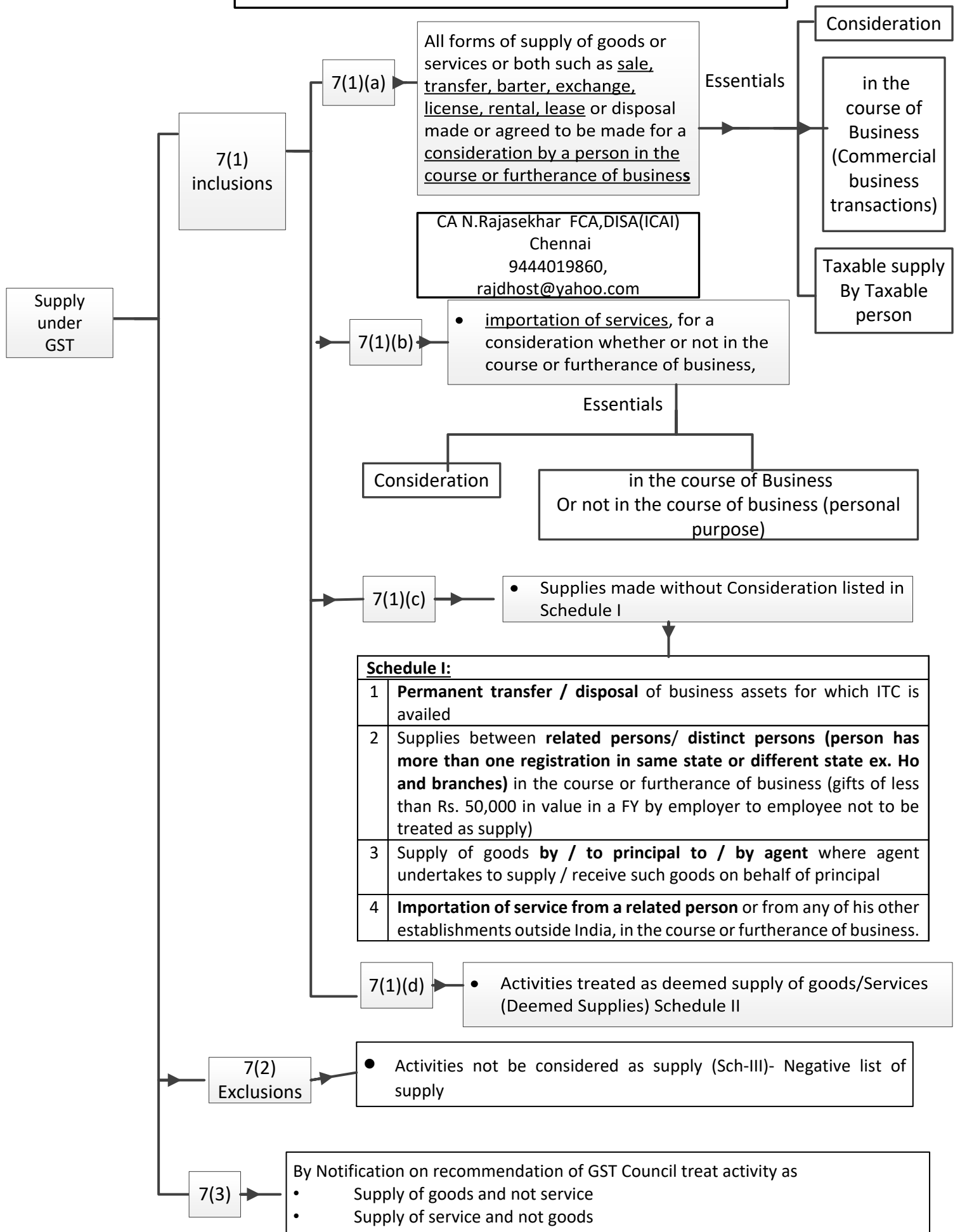
Intrastate supply

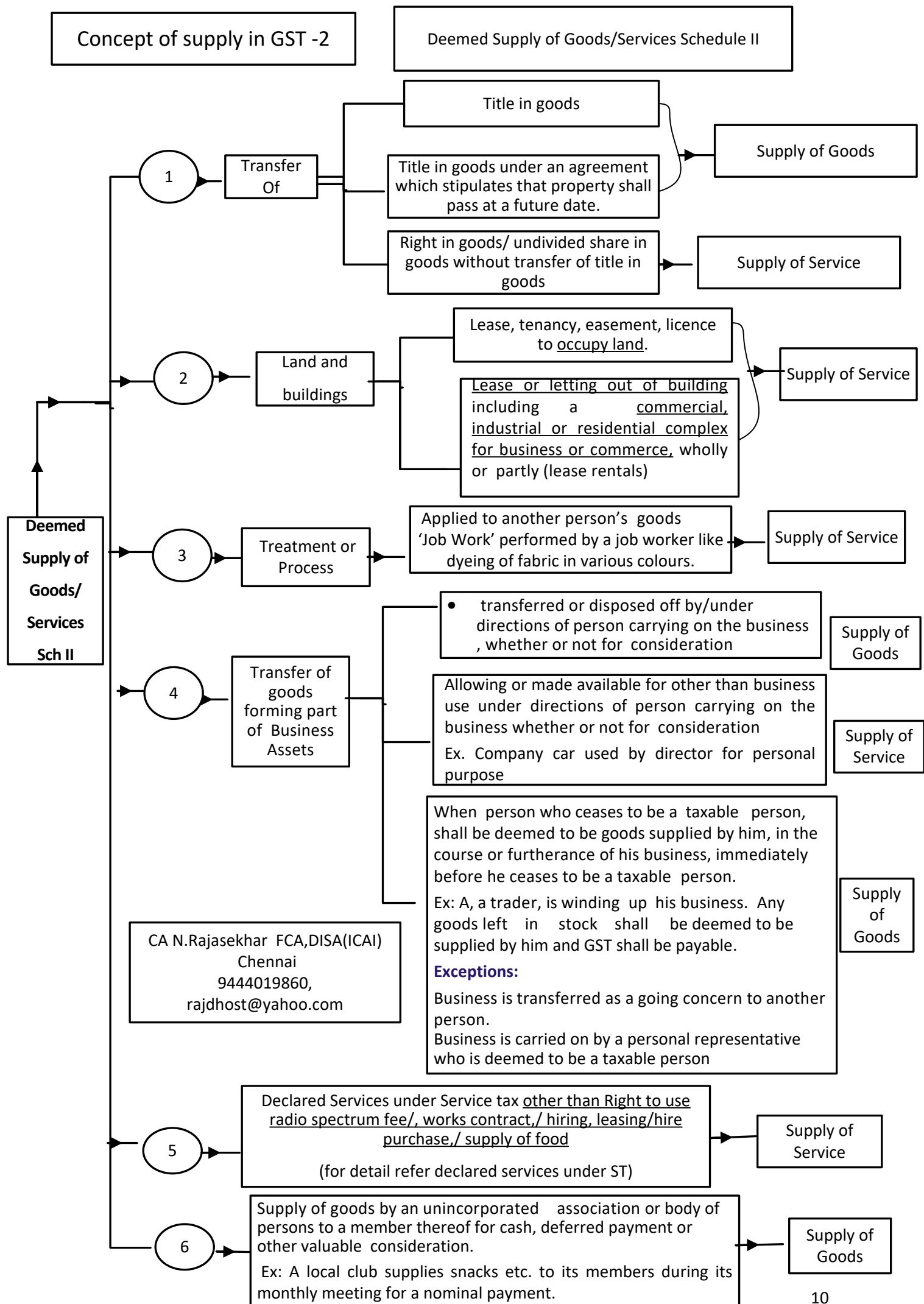
Where the location of the supplier and the place of supply of goods or services are in the same State/Union territory, it is treated as **intra-State supply** of goods or services respectively.

Interstate supply

Where the location of the supplier and the place of supply of goods or services are in (i) two different States or (ii) two different Union Territories or (iii) a State and a Union territory, it is treated as **inter-State supply** of goods or services respectively.

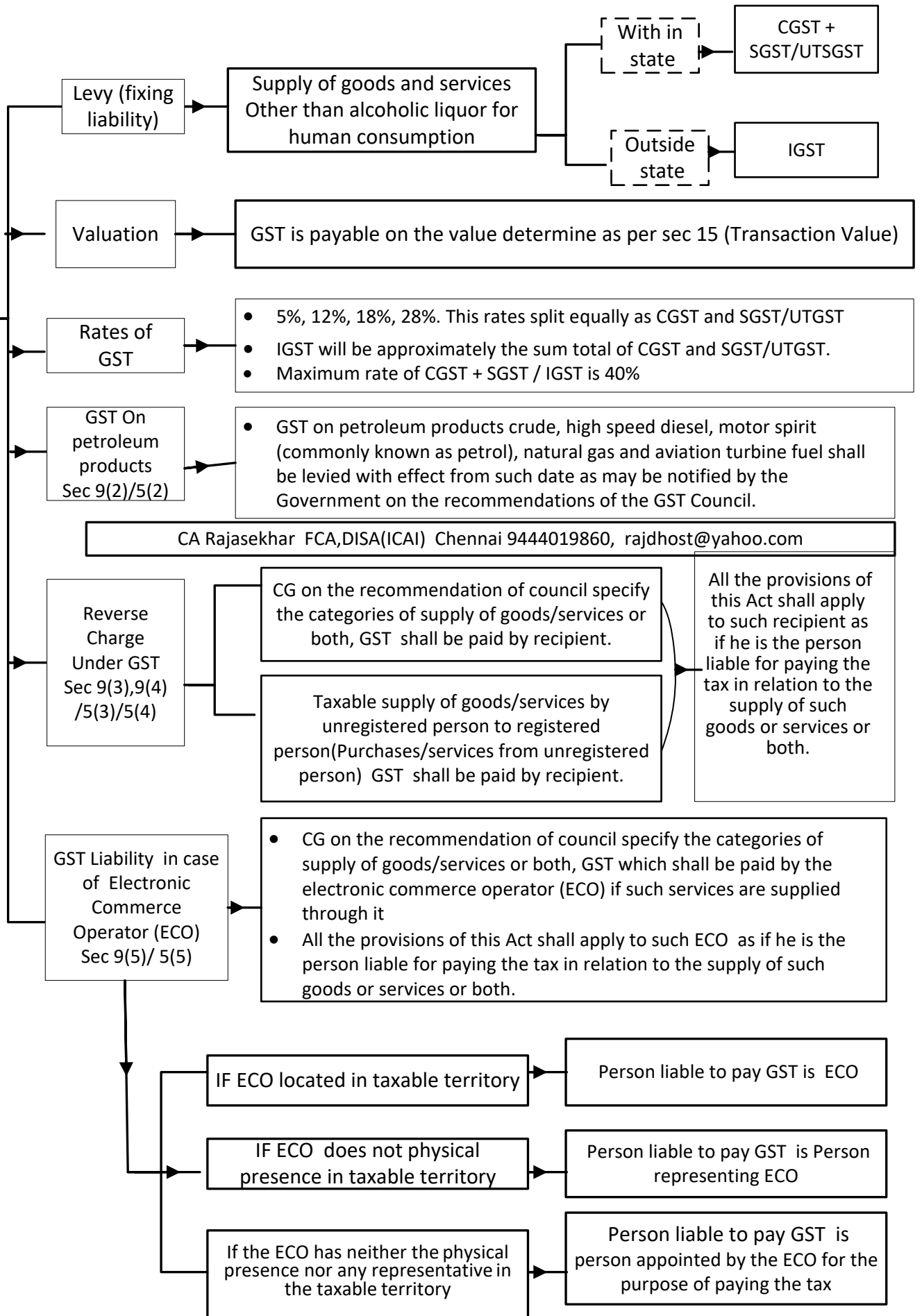
Concept of supply under GST -Sec 7 of CGST Act



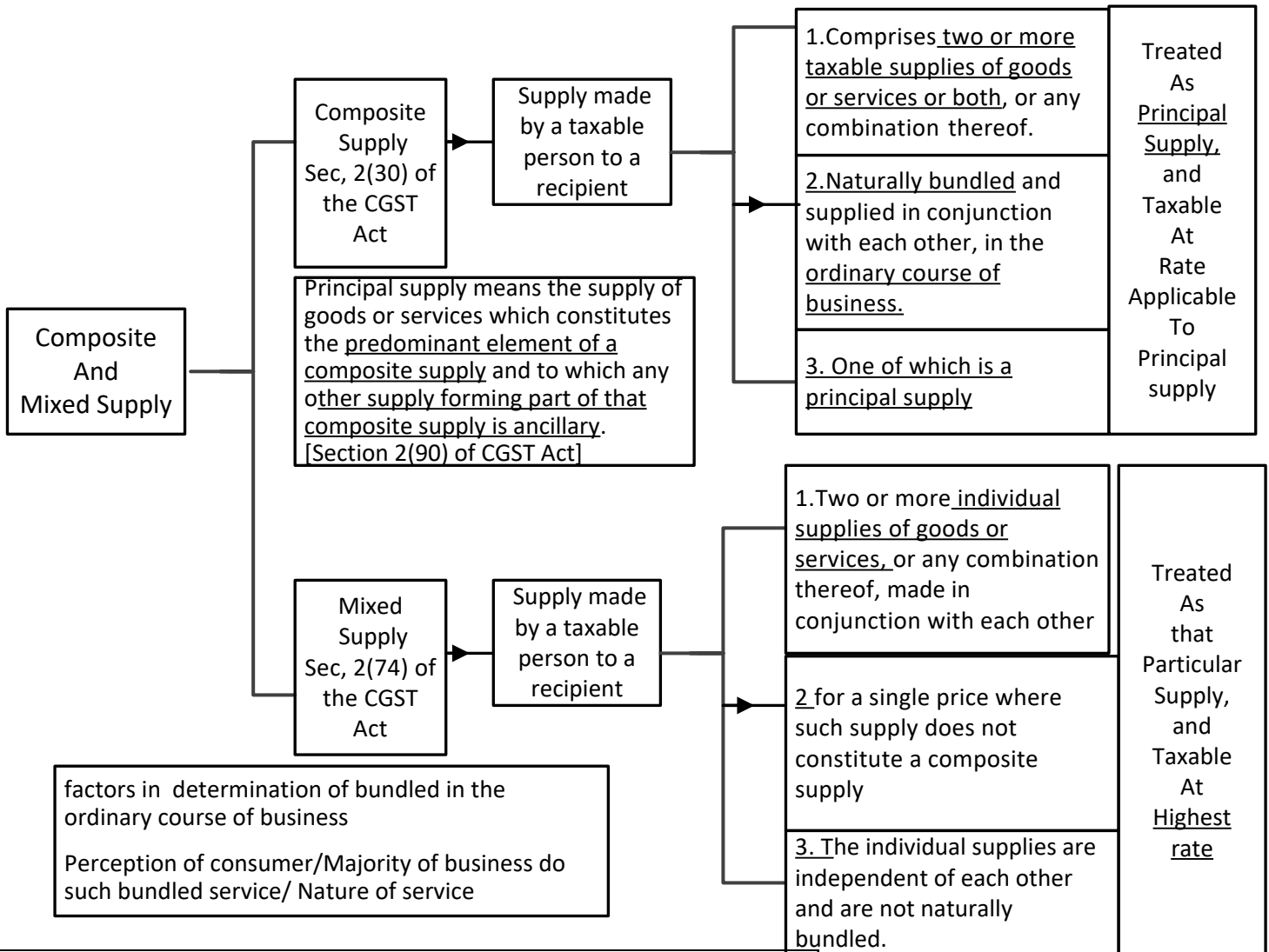


**Levy and Collection of GST Sec 9 of CGST Act
Sec 5 of IGST Act and Sec 9 of STGST/UTSGST of various states**

**Levy and
Collection
Of GST**



Taxability of Composite and Mixed Supply Sec 8 of CGST Act



Examples of composite supply

SNo	Nature of supply	Principal supply
1	Charger supplied along with mobile phones.	Mobile phone
2	Transportation of goods along with packing insurance loading and unloading	Transportation of goods
3	Supply of food along with service charges	Restaurant service
4	Works Contract	Work contract service
5	Air ticket along with food, insurance and free lounge	Airline transport of passengers
6	Supply of Equipment along with accessories and warranty	Supply of equipment
7	Hotel service along with food, telephone, laundry	Renting of immovable property

Examples of Mixed supply

SNo	Nature of supply
1	A supply of a package consisting of canned foods, sweets, Chocolates, cakes, dry fruits, aerated drink and fruit juices when supplied for a single price is a mixed supply. Each of these items can be supplied separately and is not dependent on any other. It shall not be a mixed supply if these items are supplied separately.
2	A gift pack comprising of chocolates and sweets.

Guiding principle of Composite and Mixed supply

SNo	Descriptions	Composite supply	Mixed supply
1	Naturally bundled	Yes	No
2	Supplied together	Yes	No
3	One is predominant supply	Yes	No
4	Can be supplied separately	No	No
5	Each supply priced separately	No	No
6	Other supply is not aim in itself	Yes	No
7	All supplies or goods or services	Yes	Yes
8	One supply is goods other service	Yes	Yes

GST LIABILITY NEW CLARIFICATIONS FOR NOV 2018

Fee paid by litigants in the Consumer Disputes Redressal Commissions are not leviable to GST.

Any penalty or fees imposed by or amount paid to these Commissions will also not attract GST.
Circular No. 32/06/2018 GST dated 12.02.2018

Activity of bus body building, is a supply of goods or services

Classification of this composite supply, as goods or service would depend on which supply is the principal supply which may be determined on the basis of facts and circumstances of each case
Circular No. 34/08/2018 GST dated 01.03.2018

Retreading of tyres is a supply of goods or services

The pre-dominant element is the process of retreading which is a supply of service. Rubber used for retreading is an ancillary supply. Which part of a composite supply is the principal supply. **Circular No. 34/08/2018 GST dated 01.03.2018**

Supply of retreaded tyres, where the old tyres belong to the supplier of retreaded tyres, is a supply of goods.

GST on taxable services provided by the members of the JV to the JV and vice versa and inter se between the members of the JV (Taxability of cash calls in case of JV) [Circular No. 35/09/2018 GST dated 05.03.2018]

Illustration	Taxability
Illustration A: There are 4 members in the JV including the operating member and each one contributes Rs. 100 as part of their share. A total amount of Rs. 400 is collected. The operating member purchases machinery for Rs. 400 for the JV to be used in oil production.	It not be the subject matter of 'ST/GST' for the reason that the operating member is not carrying out an activity for another for consideration. In Illustration A, the money paid for purchase of machinery is merely in the nature of capital contribution and is therefore a transaction in money
Illustration B: There are 4 members in the JV including the operating member and each one contributes Rs. 100 as part of their share. A total amount of Rs. 400 is collected. The operating member thereafter uses its own machine and performs exploration and production activities on behalf of the JV	the operating member uses its own machinery and is therefore providing 'service' within the scope of supply of CGST Act. This is because in this scenario, the operating member is recovering the cost appropriated towards machinery and services from the other JV members in their participating interest ratio.

Services provided by a College Hostel Mess

- If the catering services is one of the services provided by an educational institution to its students, faculty and staff and the said educational institution is covered by the definition of 'educational institution' as given above, then the same is exempt
- If the catering services, i.e., supply of food or drink in a mess or canteen, is provided by anyone other than the educational institution, then it is a supply of service to the concerned educational institution and attracts GST [Circular No. 28/02/2018 GST dated 08.01.2018]

Clarification on hostel accommodation provided by Trusts to students

Hostel accommodation services do not fall within the ambit of charitable activities as defined in para 2(r) of Notification No. 12/2017-CT(Rate). However, services by a hotel, inn, guest house, club or campsite, by whatever name called, for residential or lodging purposes, having declared tariff of a unit of accommodation below Rs. 1,000 per day or equivalent are exempt. Thus, accommodation service in hostels including by Trusts having declared tariff below Rs. 1,000 day is exempt. [Circular No. 32/06/2018 GST dated 12.02.2018].

Clarification on them for health care services in hospitals Circular No. 32/06/2018 GST dated 12.02.2018

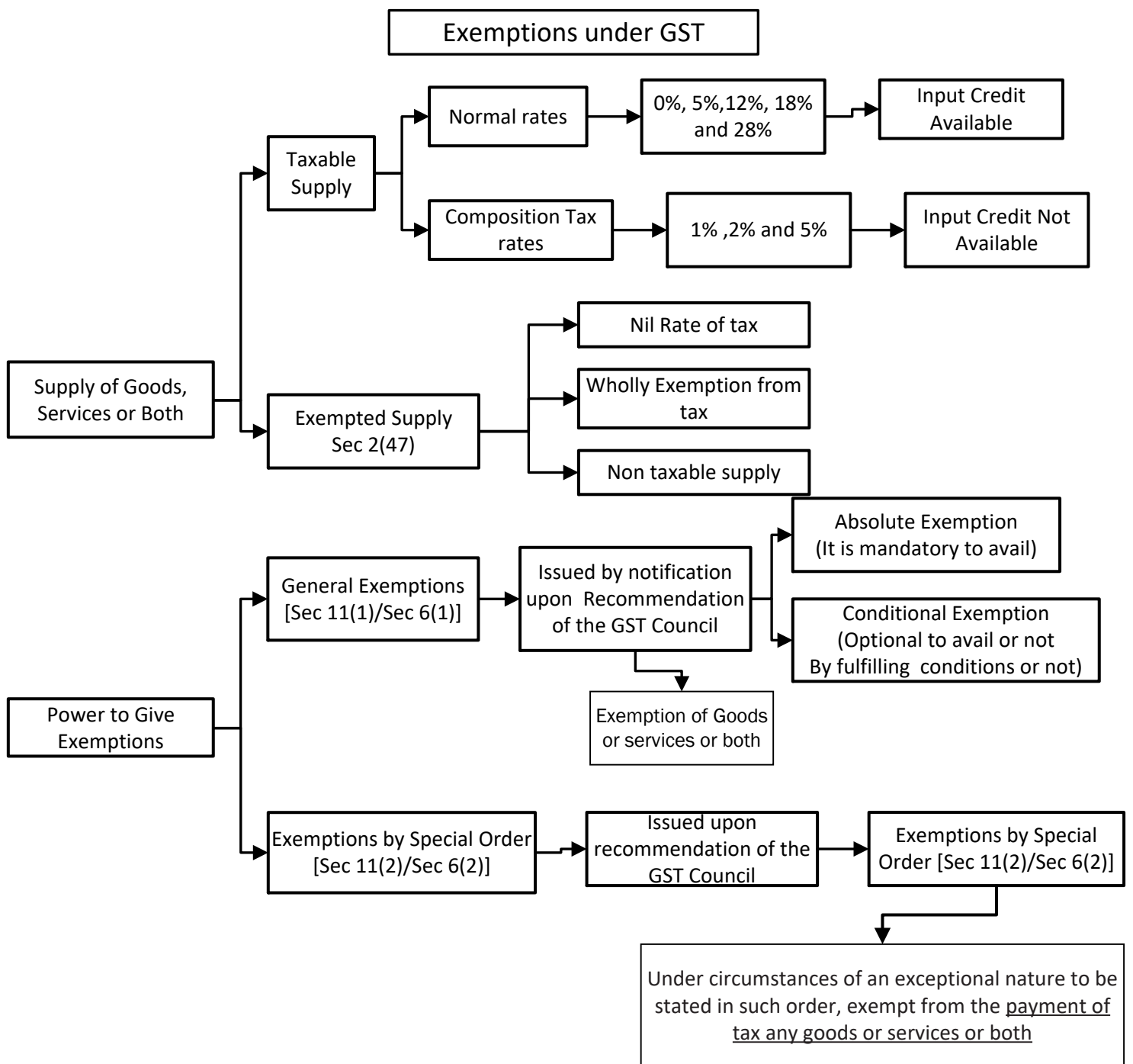
SN	Activity	GST Liability
1	Consultancy charges paid by hospitals to senior doctors/specialist when they hire them for health care services	Services provided by senior doctors/ consultants/ technicians hired by the hospitals, whether employees or not, are healthcare services which are exempt.
2	Hospitals charge the patients, say, Rs. 10000/- and pay to the consultants/ technicians only Rs. 7500/- and keep the balance for providing ancillary services which include nursing care, infrastructure facilities	The entire amount charged by them from the patients including the retention money and the fee/payments made to the doctors etc., is towards the healthcare services provided by the hospitals to the patients and is exempt.
3	food supplied to the patients	<u>When outsourced</u>, there should be no ambiguity that the suppliers <u>shall charge tax as applicable and hospital will get no ITC.</u> If hospitals have their <u>own canteens</u> and prepare their own food; then <u>no ITC</u> will be available on inputs including capital goods and in turn if they supply food to the doctors and their staff; such supplies, even when not charged, may be <u>subjected to GST.</u> Food supplied to <u>the in-patients</u> as advised by the doctor/nutritionists is a part of <u>composite supply of healthcare and not separately taxable</u> Other supplies of food by a hospital to patients (not admitted) or their <u>attendants or visitors</u> are <u>taxable</u>

GST liability on Transfer of Development rights for Construction service and Transfer of Construction service for transfer of Development rights Notification No. 4/2018 CT (R) dated 25.01.2018]

GST liability arise in both cases, the liability deferred till to the time when the possession or right in the property is transferred to the land owner by entering into a conveyance deed or similar instrument (eg. allotment letter).

Classification

cutting and packing of fabrics into pieces of different lengths from bundles or thans, will not change the nature of these goods and such pieces of fabrics would continue to be classifiable under the respective heading as the fabric. [Circular No. 13/13/2017 GST dated 27.10.2017.



- Sec 11(3) of the CGST Act, 2017 or sec 6(3) of the IGST Act, 2017, Government is empowered to clarify the scope of applicability of any notification or special order by inserting an explanation in such notification or order.
- Such clarification shall only be issued by notification within ONE year of issuing of notification or special order and every such explanation shall have effect as if it had always been the part of the first such notification or order, as the case may be

Charitable activities
Condition to claim exemption:
<u>It should register u/s 12AA of Income Tax Act and carry one or more specified charitable activities</u>
Notified charitable activities
Public health by way of care or counselling to
ill persons, severe physical or mental disable/ HIV or alcohol or drug addict persons
Public awareness of preventive health, family planning
Advancement of religion or spirituality including YOGA
Advancement of educational programs or skill development relating to,-- Orphans, persons over the age of 65 years residing in a rural area,, prisoners, mentally retarded persons
Preservation of environment including watershed, forests and wildlife
Rural area” means the area comprised in a village as defined in Land Revenue Records, but excluding: (a) the area under any municipal committee, municipal corporation, town area committee, cantonment board or notified area committee; or any area that may be notified as urban area by the Central Govt. or State Govt

Health Care services
Health care Services of diagnosis, treatment for illness, injury, deformity, abnormality and pregnancy rendered by
Authorised Medical Practitioners (ie doctors registered under medical council or any Indian law),
Hospitals, clinics, nursing homes sanatoriums, Laboratories
Paramedics, (ie Support staff like nurses, lab technicians and Physio therapist).
Plastic/Cosmetic Surgery when undertaken to restore or to reconstruct anatomy or functions of body affected due to congenital defects, developmental abnormalities, injury or trauma
Ambulance services provided by <u>all service providers</u> (whether or not by clinical establishment or an authorised medical practitioner or paramedics)
System of medicine exempted: Allopathy, Yoga, Naturopathy, Ayurveda, Homeopathy, Siddha, Unani, Any other system of medicine that may be recognized by Central Government
Not covered- (taxable)
Health care services of hair transplant or cosmetic or plastic surgery of beautification

Services by a Veterinary Clinic
Services by a Veterinary Clinic in relation to health care of animals or birds.
Cord Blood Bank
Service provided by cord blood banks by way of preservation of stem cells or any other service in relation to such preservation.

Renting of immovable property of precincts of religious place
Services by a person by way of-
renting of precincts of a <u>religious place</u> <i>meant for general public</i> owned by charitable or religious trust registered u/s 12AA/institution registered u/s 10(23(C))/Body Authority covered u/s 10(23BBA)
Or For conduct of any religious ceremony;
Religious place means a place which is primarily meant for conduct of prayers or worship pertaining to a religion, meditation, or spirituality.
Precincts include immovable located within outer boundary wall or immediate vicinity of religious place is eligible for exemption benefit
General public means the body of people at large sufficiently defined by some common quality of public or impersonal nature
Example: Hall attached to temple renting for religious function
exemption shall not apply to,-
renting of rooms where charges are Rs. 1,000 or more per day;
renting of premises, community halls, kalyanmandapam or open area, and the like where charges are Rs.10,000 or more per day;
renting of shops or other spaces for business or commerce where charges are ` 10,000 or more per month

Renting of a hotel, inn, guest house, club, campsite or other commercial places
Renting of a hotel, inn, guest house, club, campsite or other commercial places meant for residential or lodging purposes
When declared tariff ≤Rs.1000/-
Declared tariff = Room rent Published or printed (without excluding discount) + Charges for all amenities like furniture, air-conditioner, refrigerators or any other amenities
Example 1: if the declared tariff is Rs. 1100/-, but actual room rent charged is `Rs 800/-, by giving discount of Rs.300, GST will be required to be paid on Rs 800/-
Example 2. In the above example, when the declared tariff is revised as per tourist season for all customers as Rs. 800/- there is no GST liability

Pure labour contracts of a single residential unit
Services by way of pure labour contracts of construction, erection, commissioning, or installation of “original works” pertaining to a single residential unit otherwise than as a part of a residential complex.
“Residential complex” means any complex comprising of a building or buildings, having more than one single residential unit.
“Single residential unit” means a self-contained residential unit which is designed for use, wholly or principally, for residential purposes for one family.

Services by way of renting of residential dwelling for use as residence

Exempted Services	
1	Services by way of renting of residential dwelling for use as residence
2	Houses allotted by Government department to its employees and a license fee is charged for the same
3	Furnished flats given on rent for temporary stay (a few days for a family)
Taxable	
Accommodation in hotel, motel, inn, guest house, camp-site, lodge, house boat, or like places meant for temporary stay	
Residential house taken on rent used only or predominantly for commercial or nonresidential use	
House given on rent and the same being used as a hotel or a lodge	
Rooms in a hotel or a lodge let out whether or not for temporary stay	
Furnished flats given on rent for is given for a short stay for different persons over a period of time	

Pilgrimage Services
Services by a “specified organization” in respect of a “religious pilgrimage facilitated by the Ministry of External Affairs, Govt. of India, under bilateral arrangement”.
“Specified organization” means: (a) Kumaon Mandal Vikas Nigam Limited (a Govt. of Uttarakhand Undertaking), (b) Haj Committee of India, (c) State Haj Committee.
Exemption available to Services provided by “Kumaon Mandal Vikas Nigam Limited” in relation to “Kailash Mansarovar Yatra” and Service provided by “Haj Committee of India” and “State Haj Committee” in relation to “Haj Pilgrimage” is exempt.

CONSTRUCTION SERVICES
Pure labour contracts under Housing for All (Urban) Mission / Pradhan Mantri Awas Yojna
Services provided by way of pure labour contracts of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of a civil structure or any other “original works” pertaining to the “Beneficiary- Led (individual house) Construction or Enhancement (BLC)” under the Housing for All (Urban) Mission or Pradhan Mantri Awas Yojna .
“Original works” means – (a) all new constructions, (b) all types of additions and alterations to abandoned or damaged structures on land that are required to make them workable, or (c) erection, commissioning or installation of plant, machinery or equipment or structures, whether pre-fabricated or otherwise
Entry No 11 Pure labour contracts of a single residential unit
Services by way of pure labour contracts of construction, erection, commissioning, or installation of “original works” pertaining to a single residential unit otherwise than as a part of a residential complex .

“Residential complex” means any complex comprising of a building or buildings, having more than one single residential unit.

“Single residential unit” means a self-contained residential unit which is designed for use, wholly or principally, for residential purposes for one family.

Services by way of renting of residential dwelling for use as residence

Exemption of Services	
1	Services by way of renting of residential dwelling for use as residence
2	Houses allotted by Government department to its employees and a license fee is charged for the same
3	Furnished flats given on rent for temporary stay (a few days for a family)
Exemption Not available	
Accommodation in hotel, motel, inn, guest house, camp-site, lodge, house boat, or like places meant for temporary stay	
Residential house taken on rent used only or predominantly for commercial or nonresidential use	
House given on rent and the same being used as a hotel or a lodge	
Rooms in a hotel or a lodge let out whether or not for temporary stay	
Furnished flats given on rent for is given for a short stay for different persons over a period of time	
Accommodation in hotel, motel, inn, guest house, camp-site, lodge, house boat, or like places meant for temporary stay	
Residential house taken on rent used only or predominantly for commercial or nonresidential use	

Hiring of motor vehicle

Services **by way of** giving on hire –

- (a) to a State Transport Undertaking, a motor vehicle meant to carry **more than 12** passengers, or
- (b) to a Goods Transport Agency (GTA), a means of transportation of goods.

Transportation of Passengers

Transportation of Passengers		
Coverage 1		
1	Supplier of Service	Airways like Air India, spice jet /Indigo
2	Service	Transportation of passengers with or without belongings
3	Places	Embarking from or Terminating in Airports located in North East like Assam, Meghalaya, Manipur, Mizzoram, Nagaland Arunachala Pradesh, Tripura and Bagdogra of West Bengal
4	Taxability	Service exempt
Coverage 2		
1	Supplier of Service	Passenger transport service
2	Service	Transportation of passengers by road with or without belongings
3	Transport through	<u>NON A/C</u> Contract carriage Other than radio taxi [except the transportation of passengers for tourism, conducted tour, charter or hire], or by non-air-conditioned stage carriage .
4	Taxability	Service exempt

Coverage 3		
1	Supplier of Service	Passenger transport service
2	Service	Transportation of passengers with or without belongings
3	Transport through	Transport in Rail in 2 nd class, sleeper class
		Transport of passengers by metro, monorail or tramway
		Transportation in Inland water ways
		Transport of passengers by public transport, other than predominantly for tourism purpose, <u>in a vessel between places located in India:</u>
		Transport in Metered cabs or auto rickshaws fare as per Govt Rules. <u>And E - rickshaw</u>
4	Service	Exempt
		"E-rickshaw" means a special purpose battery powered vehicle of power not exceeding 4000 watts, having 3 wheels for carrying goods or passengers, for hire or reward

Notes
transportation of passenger for tourism, conducted tour, charter or hire, there is no exemption and service is taxable
Similarly transportation of passenger through radio taxi is taxable,
Contract carriage Means: Motor vehicle transporting passengers on a contract, runs on a fixed or agreed rate on any route or point to point and includes- (i) a maxicab; and (ii) a motorcar
Radio taxi means a taxi including a radio cab, by whatever name called, which is in two-way radio communication with a central control office and is enabled for tracking using Global Positioning System (GPS) or General Packet Radio Service (GPRS).

Transportation of Goods by Road, Rail, Vessel		
Coverage 1		
1	Supplier of Service	Transporter of goods <u>other than GTA or Courier Agency</u>
2	Service	Transportation of goods by road
3	Taxability	Exempt
Coverage 2		
1	Supplier of Service	Transporter of goods
2	Service	Transportation of goods by <u>Inland waterways</u>
3	Taxability	Exempt
Coverage 3		
1	Supplier of Service	Goods transport agency by road
2	Service	<u>Transportation of any goods</u>
3	Value based exemption	gross amount charged single goods carriage <=Rs.1500/-
		gross amount charged for all goods of single consignee <=Rs.750/-
Coverage 4		
1	Supplier of Service	Goods transport by road/ rail/Vessel

2	Service	Transportation of goods of description of goods SLNo 4
3	Taxability	Service is exempt.
4	List of services exempted	
	Agricultural Produce	
	(a) milk, salt and food grain including flours, pulses and rice	
	(b) organic manure	
	(c) newspaper or magazines registered with the Registrar of Newspapers	
	(d) relief materials meant for the victims of natural or man-made disasters, calamities, accidents or mishap	
	(e) defence or military equipment	
Coverage 5		
1	Supplier of Service	Transporter of goods by Air/Vessel
2	Service	Services by way of transportation of goods by an aircraft/vessel from a place outside India up to the customs station of clearance in India./ (13) Services by way of transportation of goods by an aircraft/vessel from customs station of clearance in India to a place outside India have been exempted till 30.09.2018 [Notification No. 2/2018 CT (R) dated 25.01.2018].
3	Taxability	Exempt
Coverage 6		
1	Supplier of Service	Goods transport Agency
2	Recipient	Unregistered person (including an unregistered casual taxable person)
2	Service	Transportation of goods
3	Taxability	Service is exempt.
4	Exemption Not available when the Recipient is	
	(a) any factory registered under or governed by the Factories Act, 1948, or	
	(b) any Society registered under the Societies Registration Act, 1860 or under any other law for the time being in force in any part of India, or	
	(c) any Co-operative Society established by or under any law for the time being in force, or	
	(d) anybody corporate established, by or under any law for the time being in force, or	
	(e) any partnership firm whether registered or not under any law including AOP,	
	(f) any casual taxable person registered under the CGST Act or IGST Act or SGST Act or UTGST	

Inland water ways comprise of rivers, canals, back waters, creeks etc., . There is around 14500 Km inland water ways in India

Examples of inland water/National water ways- for understanding

1. Ganga-Bhagirathi-Hooghly river Between Allahabad and Haldia connecting UP, Bihar, Jharkhand and West Bengal (1620 KM)
2. Sadiya- Dhubri stretch of river Brahmaputra (891 KM)
3. Bhadrachalam- Rajahmundry stretch of river Godavari Connecting Telangana and Andhra Pradesh

Legal Services

I Supplier of Service is arbitral tribunal (Sole arbitrator/panel of arbitrators)

S No	Recipient who is	Taxability
1	any person other than a business entity	Exempt
2	Central Government, State Government, Union territory, local authority, Governmental Authority or Government Entity;	Exempt
3	business entity with a turnover up to Rs. 20 Lakhs (Rs. 10 lakhs in case of Special category states) in the in the preceding financial year;	Exempt
4	Other business entity	No exemption. Taxable

II. Supplier of Service who is of Individual advocate other than Senior Advocate /Firm of advocates

S No	Recipient who is	Taxability
1	Individual advocate/Firm of advocates	Exempt
2	any person other than a business entity	Exempt
3	Central Government, State Government, Union territory, local authority, Governmental Authority or Government Entity	Exempt
4	business entity with a turnover up to Rs. 20 Lakhs (Rs. 10 lakhs in case of Special category states) in the in the preceding financial year;	Exempt
5	Other business entity	No exemption. Taxable

Business entity means any person including individual ordinarily carrying any activity relating to industry commerce, business, or profession

III Supplier of Service is a senior advocate (

.S No	Recipient who is	Taxability
1	any person other than a business entity	Exempt
2	business entity with a turnover up to Rs. 20 Lakhs (Rs. 10 lakhs in case of Special category states) in the in the preceding financial year;	Exempt
3	Other business entity	Taxable
4	Individual advocate/Firm of advocates by way of Consultancy or Representation capacity with a turnover up to Rs. 20 Lakhs (Rs. 10 lakhs in case of Special category states) in the in the preceding financial year;	Exempt
5	Individual advocate/Firm of advocates by way of Consultancy or Representation capacity with a turnover Exceeding Rs. 20 Lakhs (Rs. 10 lakhs in case of Special category states) in the in the preceding financial year	Taxable
6	Central Government, State Government, Union territory, local authority, Governmental Authority or Government Entity;	Exempt

Senior advocate has the meaning assigned to it in section 16 of the Advocates Act, 1961 which, inter alia, provides that an advocate may, with his consent, be designated as senior advocate if the Supreme Court or a High Court is of opinion that by virtue of his ability standing at the Bar or special knowledge or experience in law he is deserving of such distinction. Senior advocates shall, in the matter of their practice, be subject to such restrictions as the Bar Council of India may, in the interest of the legal profession, prescribe

IV. Supplier of Service is of person representing arbitral tribunal

S No	Recipient who is	Taxability
1	arbitral tribunal	Taxable

Sports Services

Services provided to a recognized sports body

S no	Supplier of Service	Recipient	Transaction	Taxability
1	individual as a <u>player, referee, umpire, coach or team manager</u>	recognised sports body	Participation in a sporting event organized by a recognized sports body	Exempt
2	recognized sports body	recognised sports body	Any service	Exempt
3	individuals such as <u>selectors, commentators, curators, technical experts</u>	recognised sports body	participation in a sporting event organized by a recognized sports body	Taxable
4	individual as a player, referee, umpire, coach or team manager	Unrecognized sports body like IPL	participation in a sporting event	Taxable

Recognized Sports body means

- ❖ The Indian /international Olympic Association
- ❖ Sports Authority of India
- ❖ A national sports federation or National sports promotion organizations recognized by the Ministry of Sports and Youth
- ❖ A federation or a body which regulates a sport at international levels and its affiliated federations or bodies regulating a sport in India

Sponsorship of tournaments or championships

Scope of Exempt Service –

Services by way of sponsorship of sporting events organized:

- a) by a national sports federation, or its affiliated federations, where the participating teams or individuals represent any district, state or zone/ any **COUNTRY**
- b) by Association of Indian Universities, Inter-University Sports Board, School Games Federation of India, All India Sports Council for the Deaf, Paralympic Committee of India or Special Olympics Bharat;
- c) by Central Civil Services Cultural and Sports Board;
- d) as part of national games, by Indian Olympic Association; or
- e) Under Panchayat Yuva Kreedha Aur Khel Abhiyaan (PYKKA) Scheme.

Services by and to FIFA

Supply of services by and to Federation Internationale de Football Association (FIFA) and its subsidiaries directly or indirectly related to any of the events under FIFA U-17 World Cup 2017 to be hosted in India.

Admission to FIFA U-17 World Cup 2017

Supply of services by way of right to admission to the events organised under FIFA U-17 World Cup 2017.

Services relating to agriculture

Services relating to agriculture by way of:

- a) agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or testing;
- b) supply of farm labour;
- c) processes carried out at an agricultural farm including tending, pruning, cutting, harvesting, drying, cleaning, trimming, sun drying, fumigating, curing, sorting, grading, cooling or bulk packaging and such like operations which do not alter essential characteristics of agricultural produce but make it only marketable for the primary market;
- d) renting or leasing of agro machinery or vacant land with or without a structure incidental to its use;
- e) loading, unloading, packing, storage or warehousing of agricultural produce;
- f) agricultural extension services;
- g) services by any Agricultural Produce Marketing Committee or Board or
- h) Services provided by a commission agent for sale or purchase of agricultural produce.

All the above services from (a) to (h) in relating to agriculture are covered in the negative list and they are not liable for GST.

Agriculture means the cultivation of plants and rearing of all life-forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products [Section 65B(3)].

Agricultural produce means any produce of agriculture on which either no further processing is done or such processing is done as is usually done by a cultivator or producer which does not alter its essential characteristics but makes it marketable for primary market [Section 65B(5)].

The definition of agricultural produce covers 'paddy'; but excludes 'rice'. It implies that benefits available to agricultural produce in the negative list are not available to rice.

With this benefit of agricultural produce does not available to Rice

However to give some tax benefit to rice, Certain exemptions available to rice in exemption list for loading, unloading, transportation, packing, warehousing, and job work of paddy in to rice.

Examples of Coverage under negative list

	Agricultural Activity	Examples cover under Exemption
1	Agricultural operations	Breeding of fish (pisciculture), rearing of silk worms (sericulture), cultivation of ornamental flowers (floriculture) and horticulture, forestry
		Plantation crops like rubber, tea or coffee
		Process of cereals, pulses, copra and jiggery done by Cultivator
2	Processes which do not alter the essential	tending, pruning, cutting, harvesting; drying, cleaning, trimming, sun drying, fumigating, curing, sorting, grading, cooling or bulk packaging

	characteristics of agricultural produce	
3	Agricultural extension services	Application of scientific research and knowledge to agricultural practices through farmer education or training
4	Renting or leasing of agro machinery or vacant land	Leasing of vacant land with a green house or a storage shed <u>which is incidental to its use for agriculture</u>
5	Commission agent	Commission received on purchase/sale of paddy
6	Services by any Agricultural Produce Marketing Committee	provision of facilities and amenities like, sheds, water, light, electricity, grading facilities, collect market fees, license fees, rents etc

Examples: Coverage under Taxable

	Agricultural Activity	Examples cover under taxable Service
1	Processes which alter the essential characteristics of agricultural produce	Process of fast food snack items like Potato chips or tomato ketchup The processes of grinding, sterilizing, extraction packaging in retail packs of agricultural products <u>for sale in retail market</u>
2	Services by any Agricultural Produce Marketing Committee	service provided by such bodies which is not directly related to agriculture or agricultural produce will be liable to tax e.g. renting of shops or other property
3	Renting or leasing of agro machinery or vacant land	Renting and leasing of agro machinery for rice
4	Commission agent	Commission received on purchase/sale of rice

GST on warehousing Loading unloading packing of tea coffee jaggery etc., [Circular No. 16/16/2017 GST dated 15.11.2017]

SN	Produce	GST Liability	Reason/Remarks
1	Tea (i.e. black tea, white tea etc.),/ processed coffee beans or powder	GST payable. No exemption	Tea is a processed product made in tea factories after carrying out several processes, such as drying, rolling, shaping, refining, oxidation, packing etc. Hence it is not an agricultural produce. Similarly in case of processed coffee bean/powder.
2	Jaggery	GST payable. No exemption	Processing of sugarcane into jaggery changes its essential characteristics. Thus, jaggery is also not an agricultural produce
3	Processed spices	GST payable. No exemption	Changes its essential characteristics.
4	Processed dry fruits/ cashew nuts	GST payable. No exemption	Changes its essential characteristics.
5	Dal obtained after dehusking or splitting or both of pulses	GST payable. No exemption	Dehusking or splitting done by millers and not by farmers, hence not an agricultural produce
6	Pulse grains such as whole gram, rajma	GST exemption	Agricultural produce

7	Milling of paddy in to rice	GST payable. No exemption	Milling is done by millers and not by farmers, hence not an agricultural produce
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Educational Services (notification No 2/2018 dated 25/01/2018)

S N	Supplier of Service	Recipient	Transaction
1	Educational institution	Students, faculty and staff	Consideration from Services to students, faculty and staff
2	Educational institution	Any person	consideration in the form of entrance fee by way of conduct of entrance examination
3	Person located in a non- taxable territory	Educational Institution <u>Other than</u> Pre-school education and education up to higher secondary school or education as a part of an approved vocational education course	Consideration from the service of supply of online educational journals or periodicals
4	Any person	Educational institution ** <u>Of Preschool and Up to Higher Secondary</u>	Consideration from service of (i)transportation of students, faculty and staff; (ii)catering, including any mid-day meals scheme sponsored by the Government; (iii)security or cleaning or house-keeping services performed in such educational institution; (iv)services relating to admission to, or conduct of examination by, such institution (v)supply of online educational journals or periodicals
** Educational institute of Pre-school education and education up to higher secondary school or equivalent Services under Exemption under SL No 4 (i) to (iii) available			SL No 4 item (v) exemption not available to Pre-school education and education up to higher secondary school or education as a part of an approved vocational education course

Skill Development Services

Services provided by: -	
1	the National Skill Development Corporation (NSDC) set up by the Government of India;
2	a Sector Skill Council (SSC) approved by the NSDC;
3	(an assessment agency approved by the SSC or the NSDC;
4	a training partner approved by the NSDC or the SSC in relation to:-
(a) the National Skill Development Programme implemented by the NSDC; or	

(b) a vocational skill development course under the National Skill Certification and
(c) any other Scheme implemented by the NSDC

Sponsorship of tournaments or championships
Scope of Exempt Service –
Services by way of sponsorship of sporting events organized:
by a national sports federation, or its affiliated federations, where the participating teams or individuals represent any district, state or zone/ any COUNTRY
by Association of Indian Universities, Inter-University Sports Board, School Games Federation of India, All India Sports Council for the Deaf, Paralympic Committee of India or Special Olympics Bharat;
by Central Civil Services Cultural and Sports Board;
as part of national games, by Indian Olympic Association; or
Under Panchayat Yuva Kreedha Aur Khel Abhiyaan (PYKKA) Scheme.

Skill Development Initiative SDI
Services of assessing bodies empanelled centrally by the Directorate General of Training, Ministry of Skill Development and Entrepreneurship by way of assessments under the Skill Development Initiative (SDI) Scheme.
Services of DDU-GKY
Services provided by Training Providers (called “Project Implementation Agencies”) under Deen Dayal Upadhyaya Grameen Kaushalya Yojana (DDU-GKY) under the Ministry of Rural Development, Govt. of India, by way of offering skill or vocational training courses certified by the National Council for Vocational Training (NCVT).

Services by a performing artist in folk or classical art forms			
Supplier of Service	Recipient	Service	Taxability
Artist of folk music, folk dance and folk theatre	Any person	Performance in folk music, folk dance/Folk theatre	Exempt up to Consideration for a Performance was up to Rs. 1,50,000
Artist of Classical music, Classical dance and Classical theatre	Any person	Performance in Classical music, Classical dance/ Classical theatre	Exempt up to Consideration for a Performance was up to Rs. 1,50,000
Above (1) and (2) as a brand ambassador	Any person	Performance in above(1) and (2)	Taxable
Artist of Western music, mimicry, modern theatre, magic shows	Any person	Performance	Taxable
Artists of cinema, television	Any person	Performance	Taxable
Artists of Painting, sculpture	Any person	Performance	Taxable

Admission to museum, zoo etc.
Service by way of admission to a museum, zoo, national park, wildlife sanctuary or a tiger reserve.
Admission to entertainment events
Services by way of right to admission to,-- (i) <u>c</u> ircus, <u>d</u> ance or theatrical performance including drama or ballet; (ii) recognized sporting event; (iii) <u>a</u> ward function, <u>c</u> oncert, <u>p</u> ageant, <u>m</u> usical performance or any <u>s</u> porting event other than a recognised sporting event (Remember – CAMPS), where the consideration for admission is not more than Rs. 250 Rs. 500/- per person. (WEF 25.01.2018)

Specified financial services Exempt

1	Interest, discount received on advancing loans, bills and deposits made
2	Service by way of purchase/sale of foreign currency among <u>banks and authorized dealers</u>
3	transactions are entered into by banks in instruments like repos and reverse repos (trading of goods)
4	Subscription to or trading in Commercial Paper (CP) or Certificates of Deposit (CD)
	Taxable Services
1	Service charges or administrative charges or entry charges, documentation charges, process fee recovered in addition to interest on a loan, advance or a deposit.
2	Investments by way of equity or any other manner where the investor is entitled to a share of profit.
3	Service by way of purchase/sale of foreign currency among banks/ authorized dealers and <u>general public</u>

Services by the intermediaries	
Services by the following persons in respective capacities -	
1	by a business facilitator / a business correspondent to a banking company with respect to accounts in its "rural area" branch.
2	by any person as an intermediary to a business facilitator / business correspondent with respect to services mentioned in above
3	by a business facilitator / business correspondent to an insurance company in a rural area

Renting of Motor Vehicle for transportation of passengers and goods	
Scope of Exempt Service –	
	Services by way of giving on hire-
	to a state transport undertaking, a motor vehicle meant to carry more than twelve passengers; or
	to a goods transport agency, a means of transportation of goods
	vehicle for transport of students, faculty and staff, to a person providing services of transportation of students, faculty and staff to an educational institution providing services by way of pre-school education and education up to higher secondary school or equivalent, [Notification No. 2/2018 CT (R) dated 25.01.2018].

Services provided by an Incubatee		
1	Supplier of Service	Incubatee located within premises of incubator
2	Service	Service Up to Total turnover of Rs.50 lakhs is exempt from GST
3	Condition for exemption	total turnover during the preceding financial year $\leq$ 50 lakhs
4	Period of exemption	Three years from the date of entering into an agreement as an incubate with incubator.
5	Incubatee” means an entrepreneur located within the premises of a Technology Business Incubator (TBI) or Science and Technology Entrepreneurship Park (STEP) recognised by the National Science and Technology Entrepreneurship Development Board (NSTEDB) of the Department of Science and Technology, Government of India and who has entered into an agreement with the TBI or the STEP to enable himself to develop and produce hi-tech and innovative products.	

Services provided by TBI or STEP		
1	Supplier of Service	Technology Business Incubator (TBI) or Science and Technology Entrepreneurship Park (STEP)
2	Service	Any Service to Incubatee

Business exhibition
Service by an organizer to any person in respect of a business exhibition held outside India.

Tour operator
Services provided by a tour operator to a foreign tourist in relation to a tour conducted wholly outside India.
“ Tour operator ” means any person engaged in the business of planning, scheduling, organizing, arranging tours (which may include arrangements for accommodation, sightseeing or other similar services) by any mode of transport, and includes any person engaged in the business of operating tours.
Example: Service provided by Tavel Agency to a Foreign National for a tour conducted in Outside India is exempted.

Import of services
Services received from a Supplier of Service located in a Non-taxable Territory (NTT) by -
(a) the Central Govt., State Govt., Union Territory, Local authority, Governmental authority or an individual in relation to any purpose other than commerce, industry, business or profession; or
(b) an entity registered u/s 12AA of the Income tax Act, 1961 for the purposes of providing charitable activities; or
(c) a person located in a non-taxable territory (NTT).

This exemption is not allowed to –
 (i) Online information and database access or retrieval services (**OIDAR**) received by persons specified in Entry (a) or Entry (b); or
 Services by way of transportation of goods by a vessel from a place outside India upto the customs station of clearance in India.

Service by a club/association/society to own members		
Coverage 1		
1	Supplier of Service	Registered trade union
2	Service	To its own members by way of <u>reimbursement of charges or share of contribution</u>
3	Taxability	Exempt
Coverage 2		
1	Supplier of Service	Registered unincorporated body or a non- profit entity
2	Service	To its own members by way of <u>reimbursement of charges or share of contribution, for the provision of carrying out any activity which is exempt from the levy of GST</u>
3	Taxability	Exempt
Coverage 3		
1	Supplier of Service	Registered unincorporated body or a non- profit entity
2	Service	To its own members by way of reimbursement of charges or share of contribution provided by Resident welfare Association.
3	Taxability	Exempt up to an amount of Rs. 5000/- Rs. 7500/- (WEF 25.01.2018) per month per member for sourcing of goods or services from a third person for the common use of its members in a housing society or a residential complex

Classification on Clarification regarding exemption available to services provided by a Resident Welfare Association (RWA) to its own members under earlier law is also made applicable		
	Issue	Clarification
1	In a residential complex, monthly contribution collected from members is used by the RWA for the purpose of making payments to the third parties, in respect of commonly used services or goods ex. Maintenance lift, sump etc	Exemption in mega exemption notification is provided specifically with reference to service provided by an unincorporated body or a non-profit entity registered under any law for the time being in force such as RWAs, to its own members
2	If the contribution of a member(s) of a RWA exceeds `Rs.5,000 per month, how should the GST liability be calculated	If per month per member contribution of any or some members of a RWA exceeds `Rs. 5,000, entire contribution of such Members liable for GST
3	If a RWA provides certain services such as payment of electricity or water bill issued by third person, in the name of its members, acting as a 'pure agent' of its members, is exclusion from value of taxable service available for the purposes of SSP exemption or exemption provided under mega exemption notification?	Expenditure or costs incurred by a Supplier of Service as a pure agent of the recipient of service shall be excluded from the value of taxable service. If RWA do not charge any any Commission . If Bills were in the name of RWA there is no agent involved and hence includable in value.

5	Is ITC credit available to RWA for payment of GST	RWA may avail ITC and use the same for payment of GST
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SERVICES BY CERTAIN BODIES / INSTITUTIONS

ESI
Services by the Employees' State Insurance Corporation (ESIC) to the persons governed under the ESI Act, 1948.
EPFO
Services provided by Employees Provident Fund Organisation (EPFO) to the persons governed under EPF Act, 1952.
IRDA
Service provided by the Insurance Regulatory and Development Authority of India (IRDA) to insurers (i.e. insurance companies) under the IRDA Act, 1999.
SEBI
Service provided by the Stock Exchange Board of India (SEBI) by way of protecting the interests of investors in securities and to promote the development of, and to regulate, the securities market.
RBI
All services provided by Reserve Bank of India (RBI).
The services provided by RBI to any person are exempted but the services provided by any person to RBI are not exempted.
FDM
All services provided by a 'Foreign Diplomatic Mission' (FDM) located in India.
'FDM' does not cover any office or establishment of an international organization / multi-national company. Hence the services provided by such office or establishment are not exempt. - Services provided by FDM are exempt. But services provided to FDM are not exempt under this Entry.
NCCCD
Service provided by the National Centre for Cold Chain Development (NCCCD) by way of cold chain knowledge dissemination.

Miscellaneous Services

Going concern
Services by way of transfer of a going concern, as a whole or an independent part thereof.
Services associated with transit cargo to Nepal and Bhutan
Supply of services associated with transit cargo to Nepal and Bhutan (landlocked countries).
Acquiring Bank
Services provided by an "acquiring bank" to any person in relation to settlement of an amount upto Rs. 2,000 in a single transaction transacted through credit card, debit card, charge card or other payment card services.
"Acquiring Bank" means any banking company, financial institution including non- banking financial company (NBFC) or any other person [Example – Paytm] , who makes the payment to any person who accepts such card.
Upfront amount for industrial leasing
Upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable in respect of service by way of granting of long term lease (30 years or more) lease of industrial plots or plots for

Spectrum service
Service provided by the Central Govt., State Govt., Union Territory or Local authority by way of allowing a business entity to operate as a telecom Supplier of Service or use radio frequency spectrum during the period prior to
Leasing of Railways assets
Services of leasing of assets (rolling stock assets including wagons, coaches, locos) by the Indian Railway Finance Corporation to Indian Railways.
Journalist
Services by way of collecting or providing news by an independent journalist, Press Trust of India (PTI) or United News of India.
Public libraries
Services of public libraries by way of lending of books, publications or any other knowledge-enhancing content or material.
Slaughtering service
Services by way of slaughtering of animals
Public conveniences
Services by way of public conveniences such as provision of facilities of bathroom, washrooms, lavatories, urinal or toilets.
Services in Nepal or Bhutan
Supply of services associated with transit cargo to Nepal and Bhutan (landlocked countries) exempt from CGST
Specified services received by RBI
Services received by the RBI, from outside India in relation to management of foreign exchange reserves.
“External asset management” services received by RBI from overseas financial institution is exempt under this Entry.
Supply of service by way of access to a road or a bridge on payment of annuity, has been exempted from GST

NEW EXEMPTIONS

- ❖ Services by an intermediary of financial services located in a multi services SEZ with International Financial Services Centre (IFSC) status to a customer located outside India for international financial services in currencies other than Indian rupees (INR), have been exempted from CGST
- ❖ Services by way of fumigation in a warehouse of agricultural produce have been exempted from CGST [Notification No. 2/2018 CT (R) dated 25.01.2018].
- ❖ Services relating to cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products or agricultural

produce by way of fumigation in a warehouse of agricultural produce, have been exempted from CGST [Notification No. 2/2018 CT (R) dated 25.01.2018].

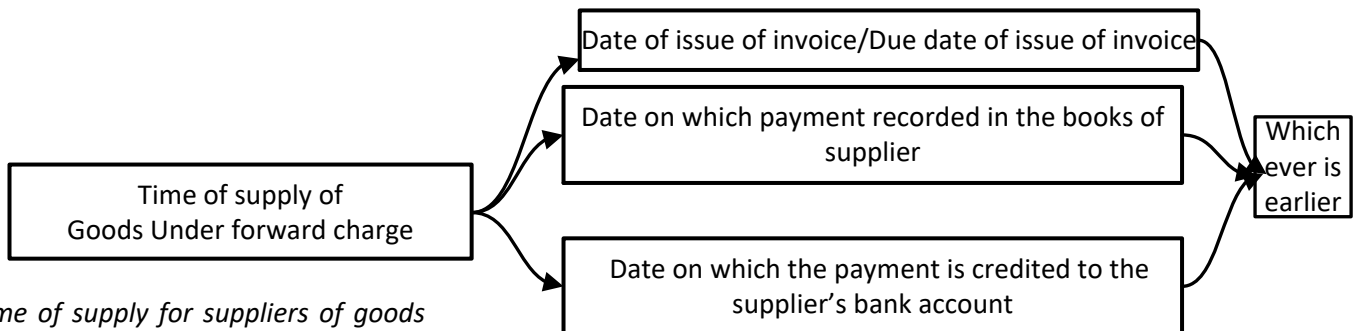
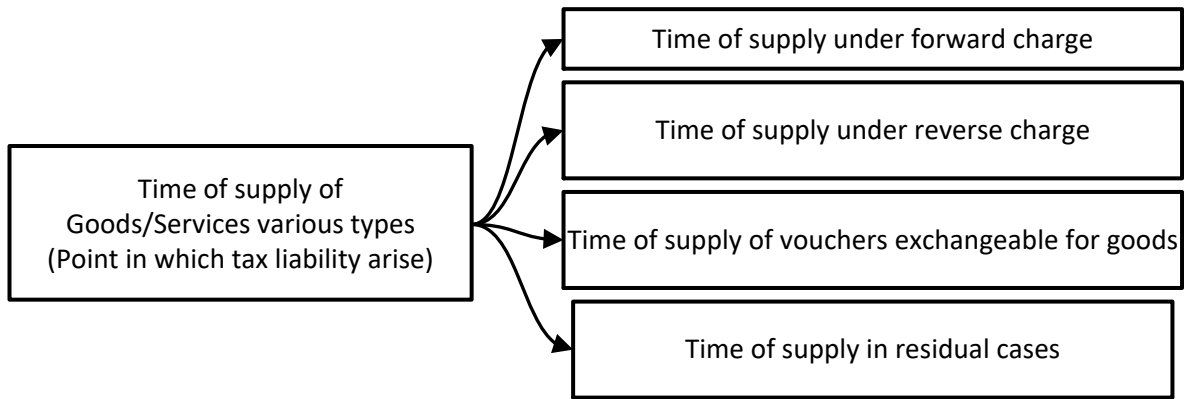
- ❖ Earlier, services by a specified organisation in respect of a religious pilgrimage facilitated by Ministry of External Affairs the Government of India, under bilateral arrangement were exempted from CGST vide entry at serial no. 60. The said entry has been amended to omit the words “Ministry of External Affairs” therefrom [Notification No. 2/2018 CT (R) dated 25.01.2018].
- ❖ Services by way of providing information under the Right to Information Act, 2005 have been exempted from CGST [Notification No. 2/2018 CT (R) dated 25.01.2018]

Services to and BY Government Exempt from tax
SERVICES TO GOVT.
Pure services to Govt. in relation to Panchayat / Municipality function
Pure services (excluding works contract service or other composite supplies involving supply of any goods) provided to the Central Govt., State Govt., Union Territory, local authority or Governmental authority / a Government Entity by way of any activity: Notification No. 2/2018 CT (R) dated 25.01.2018 (i) in relation to any function entrusted to a Panchayat under article 243G of the Constitution, or (ii) in relation to any function entrusted to a Municipality under article 243W of the Constitution.
Service by a Govt. entity to Govt.
Supply of service by a "Government entity" to Central Government, State Government, Union territory, local authority or any person specified by Central Government, State Government, Union territory or local authority against consideration received from Central Government, State Government, Union territory or local authority, in the form of grants. "Government entity" means an authority or a board or any other body including a society, trust, corporation, (i) set up by an Act of Parliament or State Legislature; or (ii) established by any Government, with 90% or more participation by way of equity or control, to carry out a function entrusted by the Central Government, State Government, Union Territory or a local authority."
Services by Fair Price Shops to Central Govt. State Govt. / UT
Supply of services by Fair Price Shops to Central Govt State Govt. / UT. by way of sale of wheat, rice and coarse grains under Public Distribution System (PDS) against consideration in the form of commission or margin.
Air services to the Central Govt.
Services provided to the Central Govt. by way of transport of passengers (with or without accompanied belongings), by air, embarking from or terminating at a Regional Connectivity Scheme Airport (RCS Airport), against consideration in the form of viability gap funding, for a period of 3 years from the date of commencement of operations of the regional connectivity Notification No. 2/2018 CT (R) dated 25.01.2018]. This exemption shall not be allowed after expiry of a period of 1 year from the date of commencement of operations of the RCS Airport as notified by the Ministry of Civil Aviation.
Insurance services to Govt.
Services provided to the Central Govt., State Govt., Union Territory under any insurance scheme for which total premium is paid by the Central Govt., State Govt. or Union Territory.
Training services to Govt.
Services provided to the Central Govt., State Govt. or Union Territory administration under any training programme for which total expenditure is borne by the Central Govt., State Govt. or Union Territory administration.
Services provided by GSTN to Govt.
Services provided by the Goods and Service Tax Network (GSTN) to the Central Govt., State Govt. or Union Territories for implementation of GST.

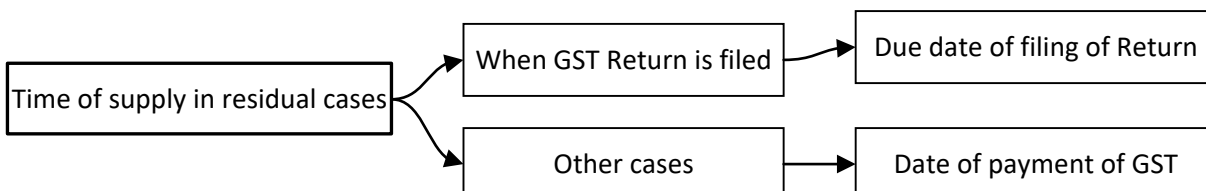
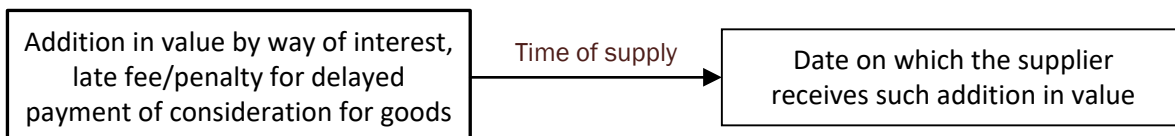
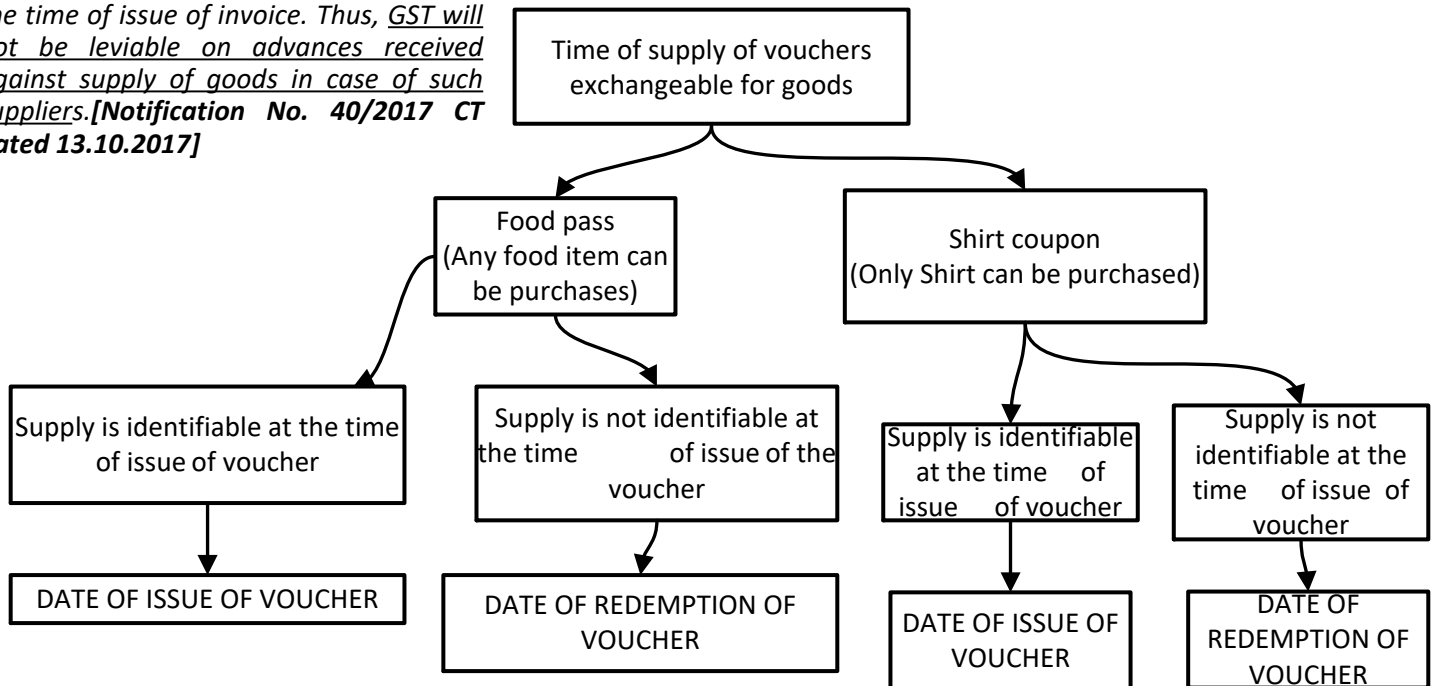
Composite supply of goods and services in which the value of supply of goods constitutes not more than 25% of the value of the said composite supply provided to the Central Government, State Government or Union territory or local authority or a Governmental authority or a Government Entity by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution, has been exempted from CGST [\[Notification No. 2/2018 CT \(R\) dated 25.01.2018\]](#).

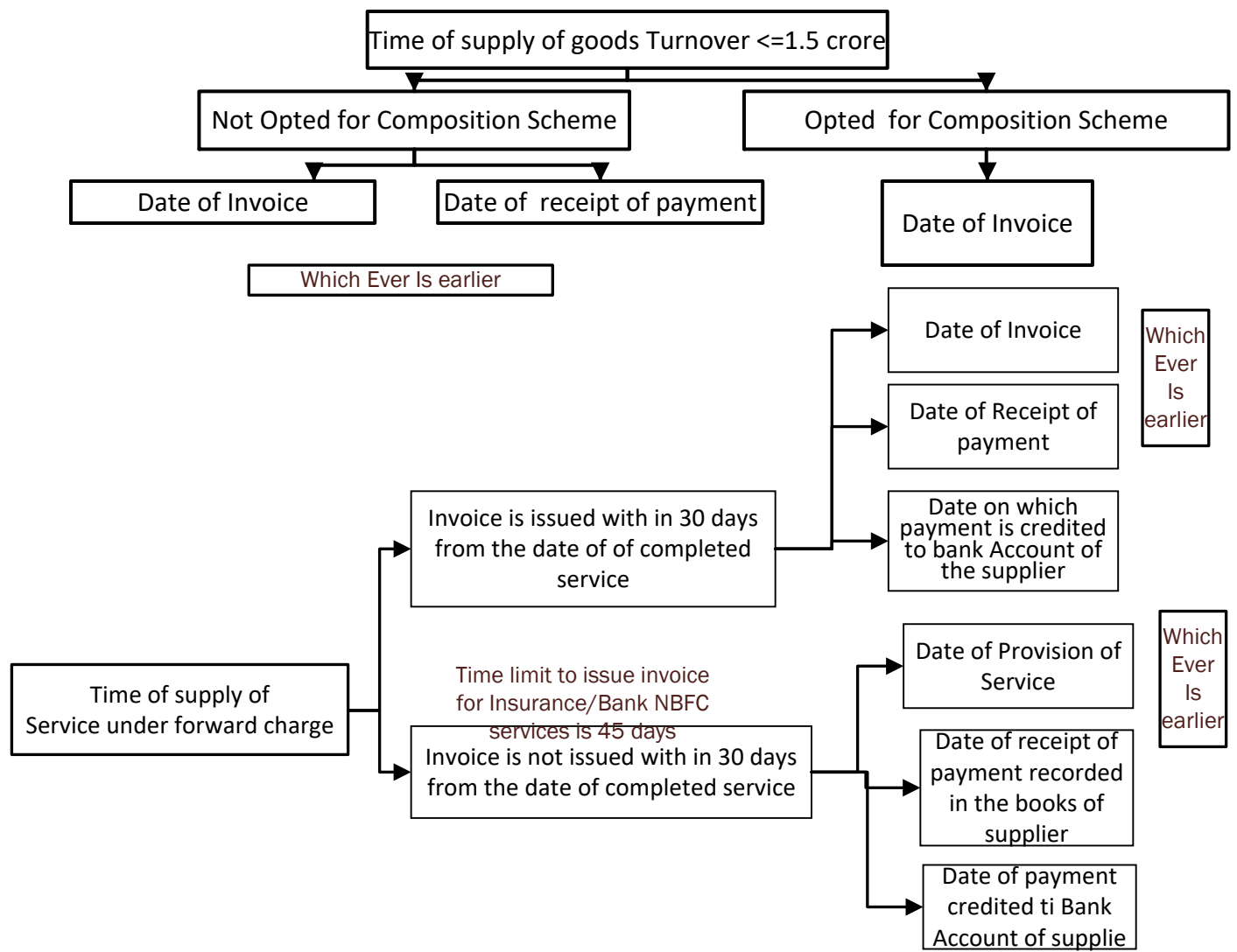
SERVICES BY GOVT	
Municipality services by Govt.	
Services by Central Govt., State Govt., Union Territory, Local authority or Governmental authority by way of any activity in relation to any function entrusted to a municipality under article 243W of the Constitution.	
Panchayat services by Govt.	
Services by Central Govt., State Govt., UT Govt., Local authority or a Governmental authority by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution.	
All services by Govt.	
All services provided by Central Govt., State Govt., Union Territory or Local authority excluding following services (unless the following services are covered under any other Entry of Exemption): (i) Services by the Department of Posts by way of speed post, express parcel post, life insurance and agency services provided to a person other than the Central Govt., State Govt., Union territory. (ii) Services in relation to an aircraft or a vessel (inside or outside the precincts of a port or airport). (iii) Transport of goods or passengers. (iv) Any service [other than services covered under above provided to a business entity.	
Services by Govt. to a small business entity	
Services provided by the Central Govt., State Govt., Union Territory or Local authority to a business entity with an Aggregate Turnover of upto Rs. 20 lakh (Rs. 10 lakh in case of a Special Category States) in the preceding Financial Year [i.e. a small business entity	
“Renting”, in relation to immovable property, means allowing, permitting or granting access, entry, occupation, use or any such facility, wholly or partly, in an immovable property, with or without the transfer of possession or control of the said immovable property and includes letting, leasing, licensing or other similar arrangements in respect of immovable property.	
This exemption is not allowed to following services: Services like (i) Services by the Department of Posts by way of speed post, express parcel post, life insurance and agency services provided to a person other than the Central Govt., State Govt., Union territory. (ii) Services in relation to an aircraft or a vessel (inside or outside the precincts of a port or airport). Transport of goods or passengers (iii) And Services by way of renting of immovable property	
Services by Govt. to Govt.	

Time of supply of Goods/Services

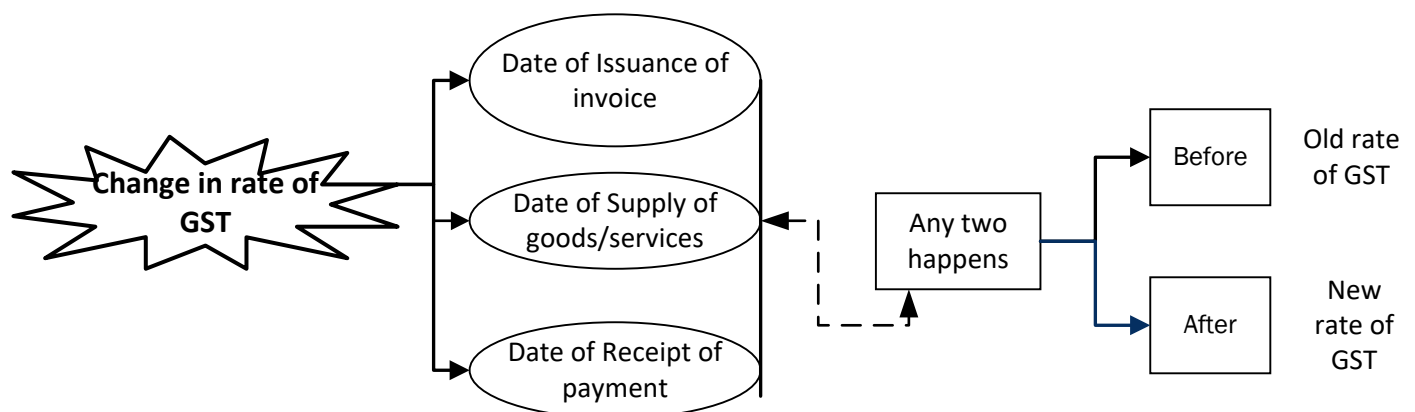


The time of supply for suppliers of goods having aggregate turnover up to Rs.1.5 crore in the preceding financial year (excluding composition suppliers) will be the time of issue of invoice. Thus, GST will not be leviable on advances received against supply of goods in case of such suppliers. [Notification No. 40/2017 CT dated 13.10.2017]





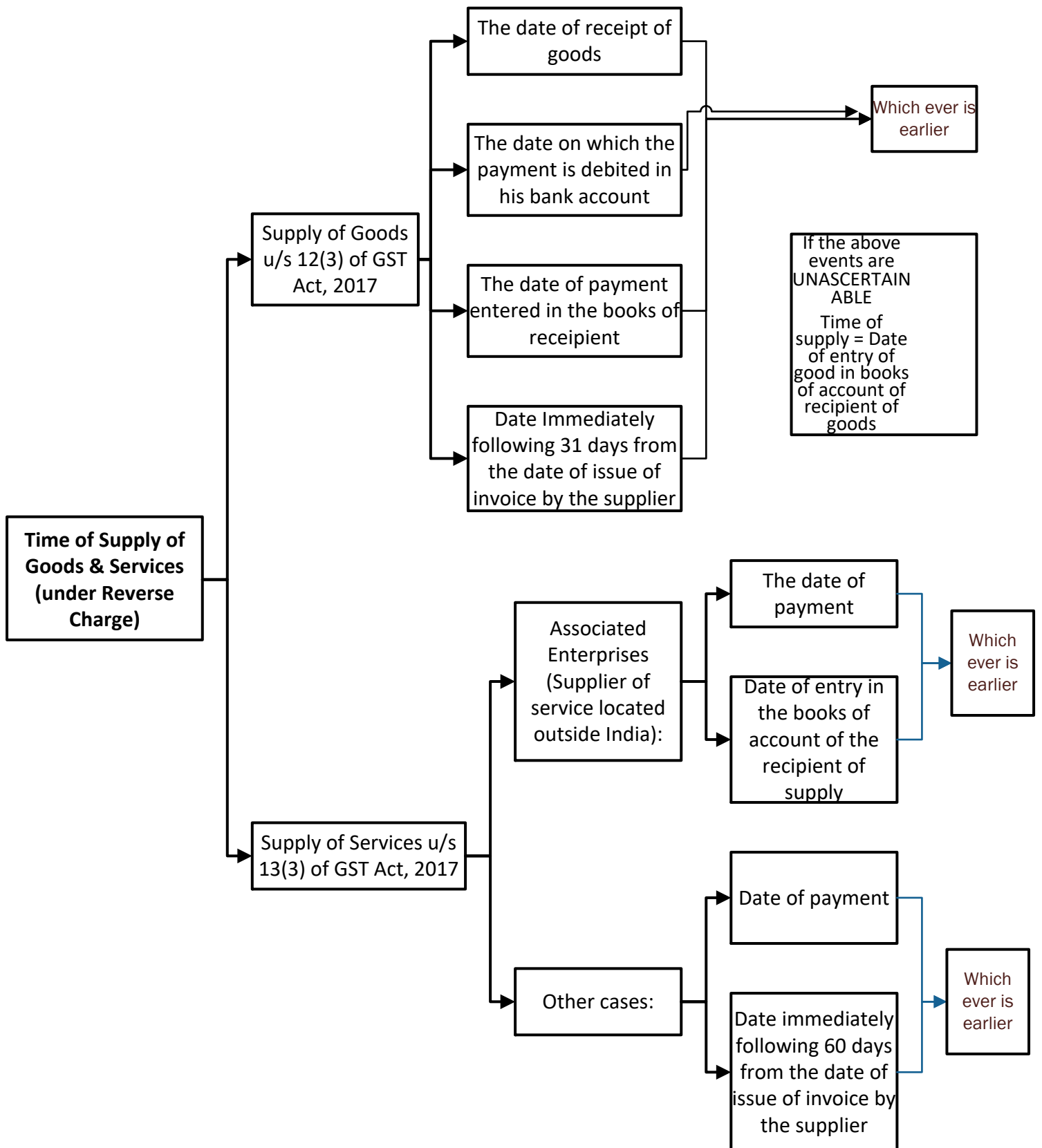
Change in rate of GST in case of supply of goods/Services



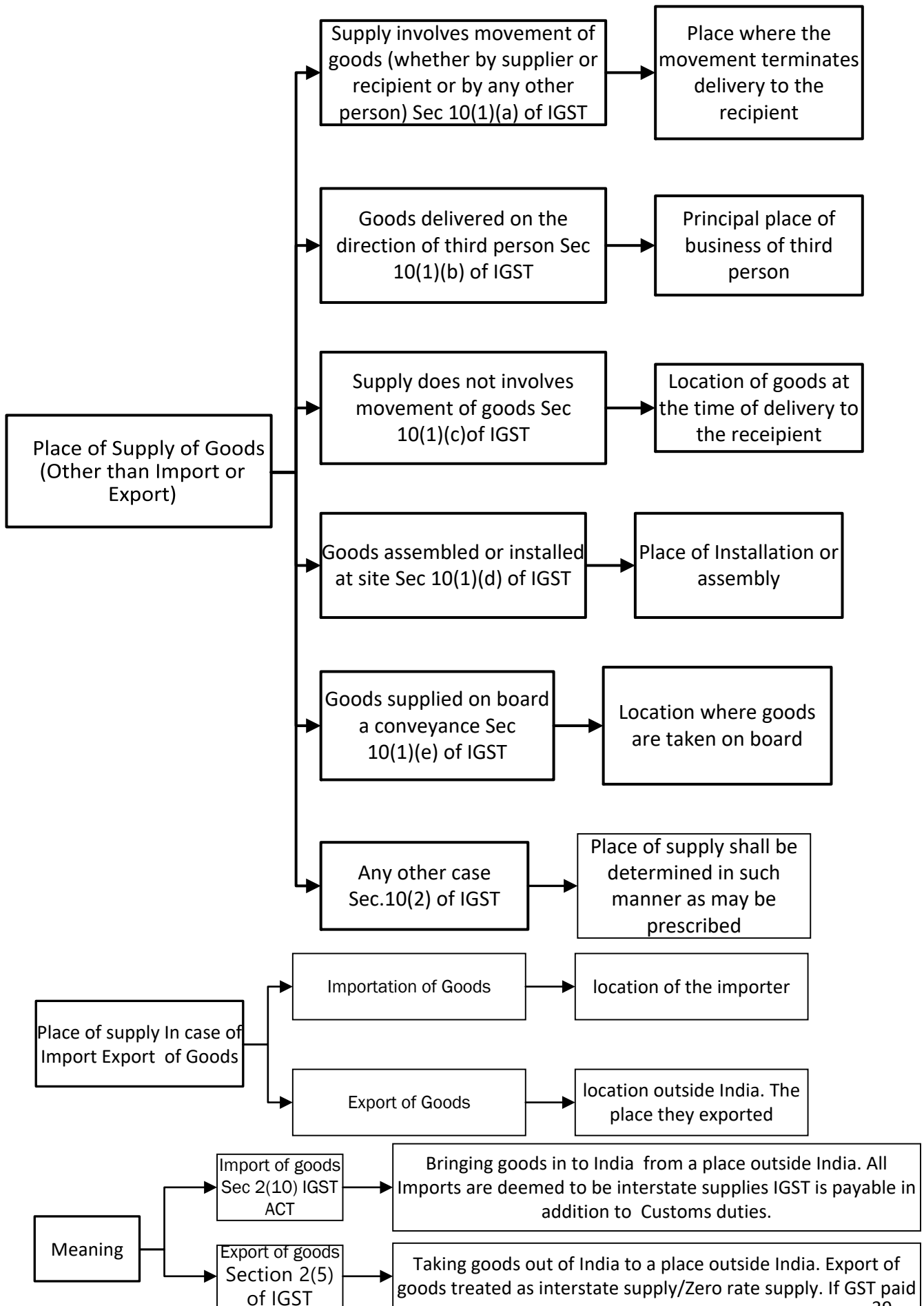
Meaning of Date of Receipt payment

1	Normal cases	Date of entry in books or date of crediting in bank account, Whichever earlier.
2	Special cases in case of Change in rate of GST	
	Rate changes between entry in books and credited in bank account	Payment is credited in the bank with in 4 days from the effective date of new rate- <u>date of entry in the books is the date of payment</u> Payment is credited in the bank after 4 days- <u>date of Crediting in the bank account is the date of payment</u>

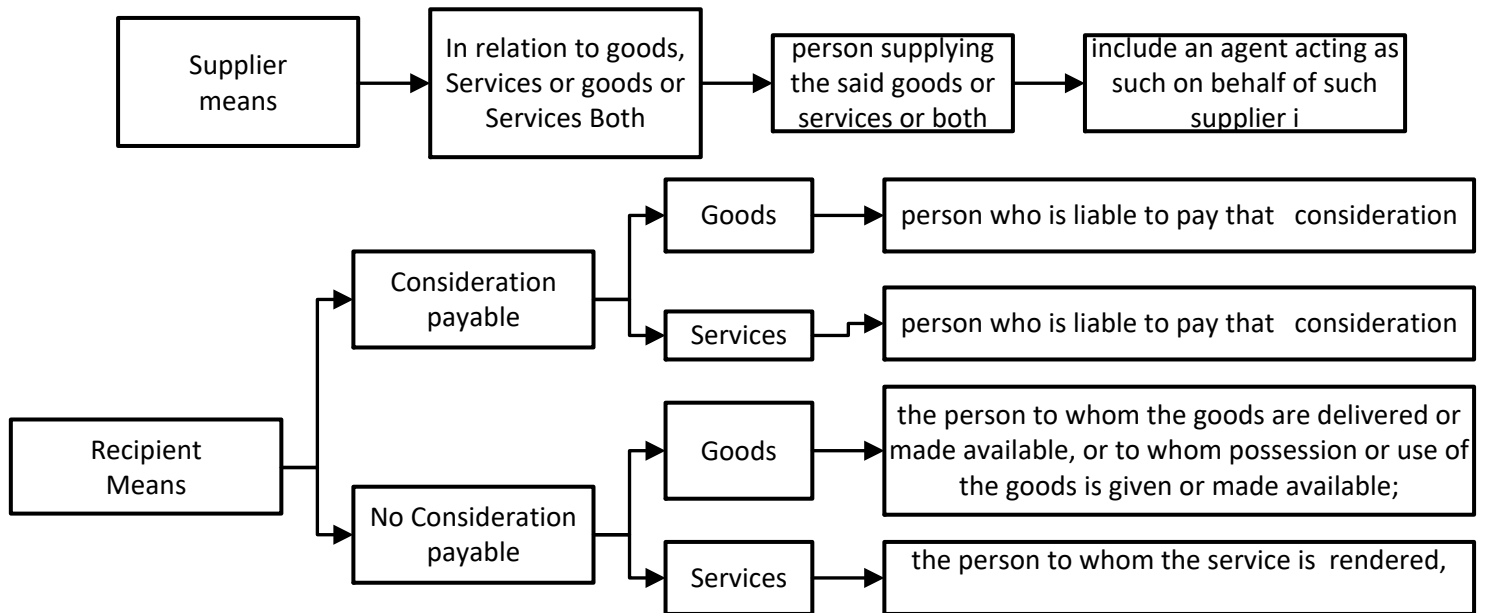
Time of Supply of Goods & Services (under Reverse Charge)



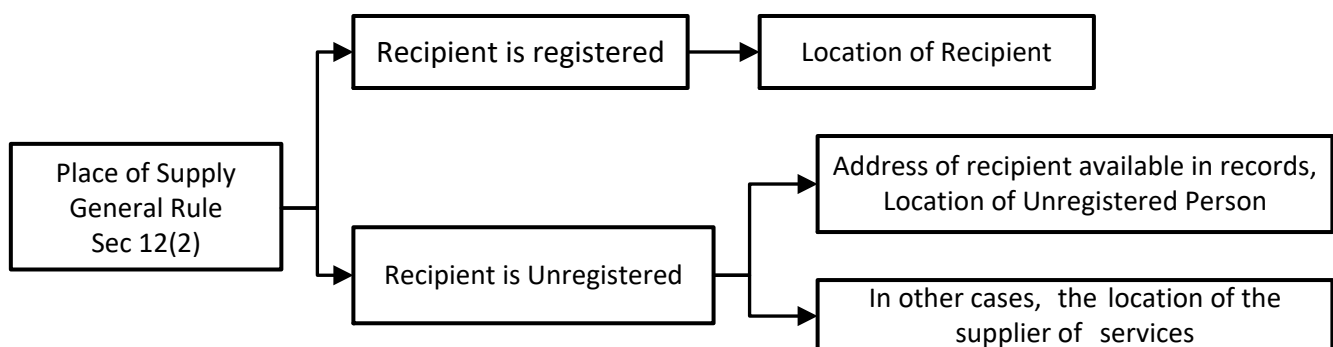
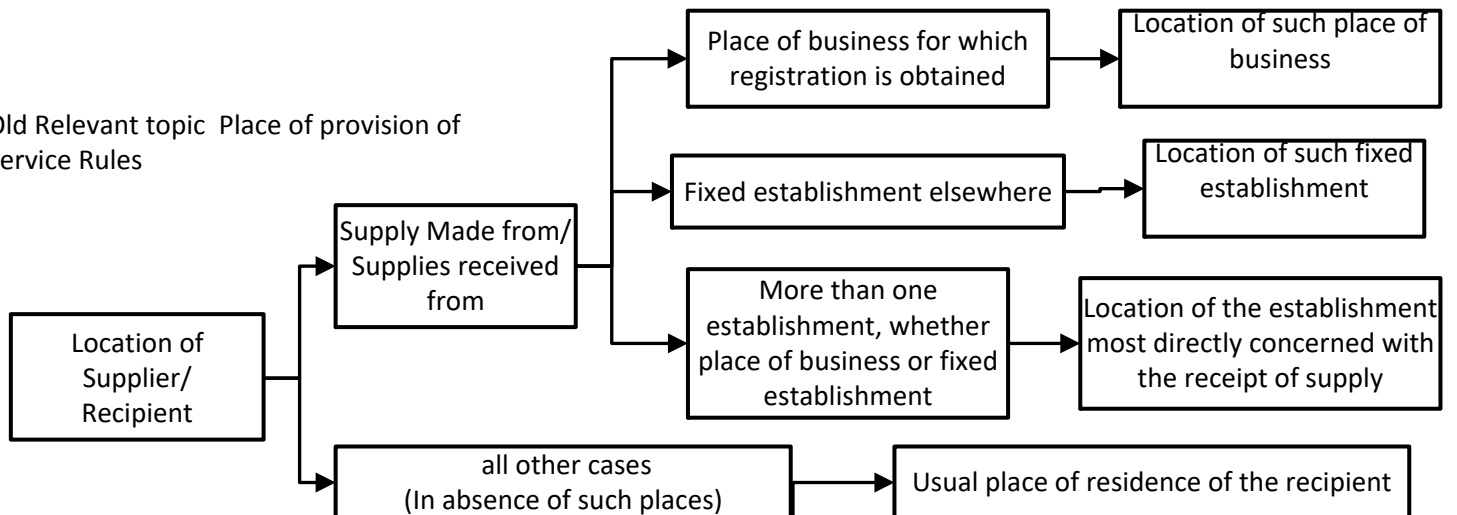
Place of Supply of Goods (Other than Import or Export)

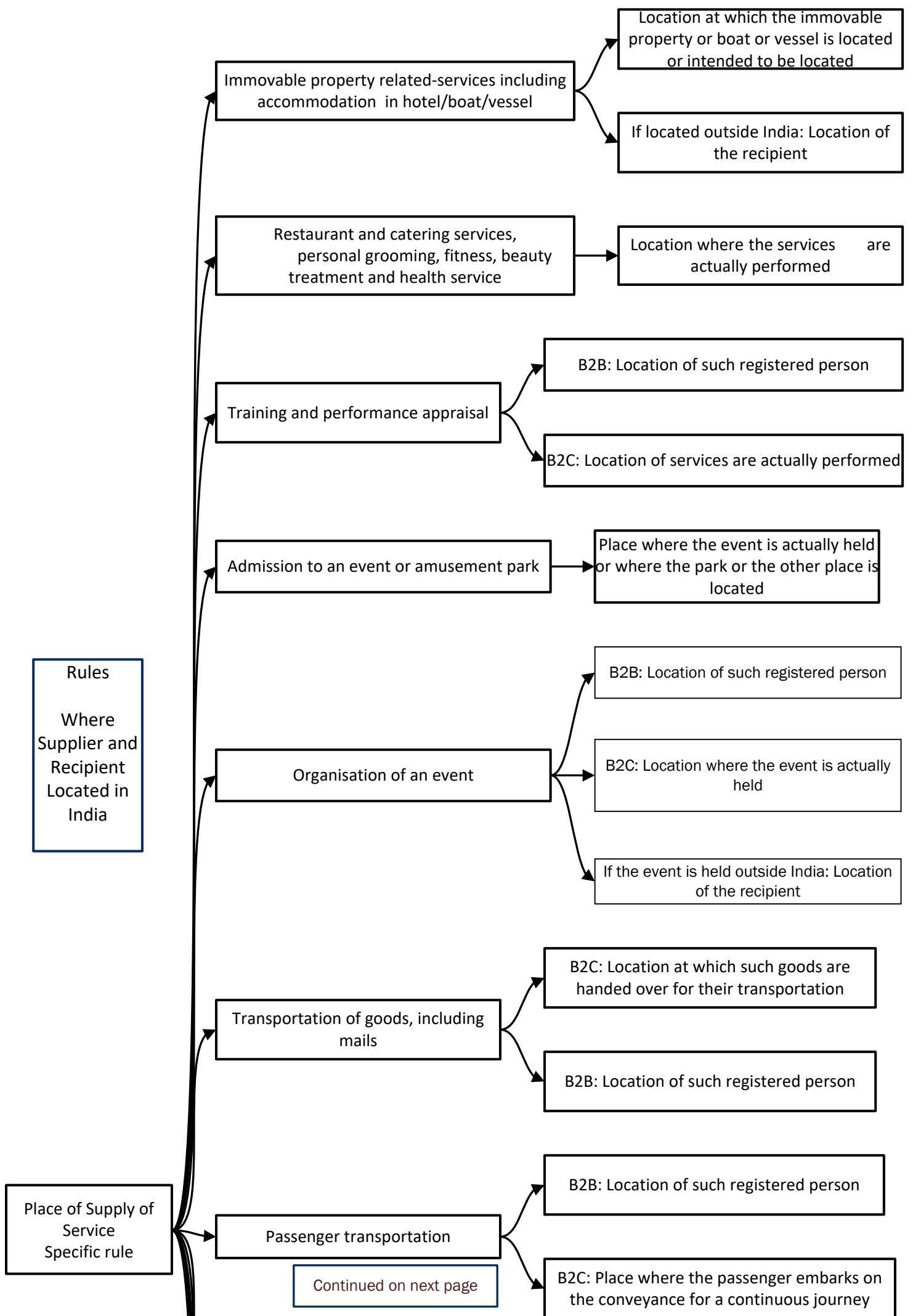


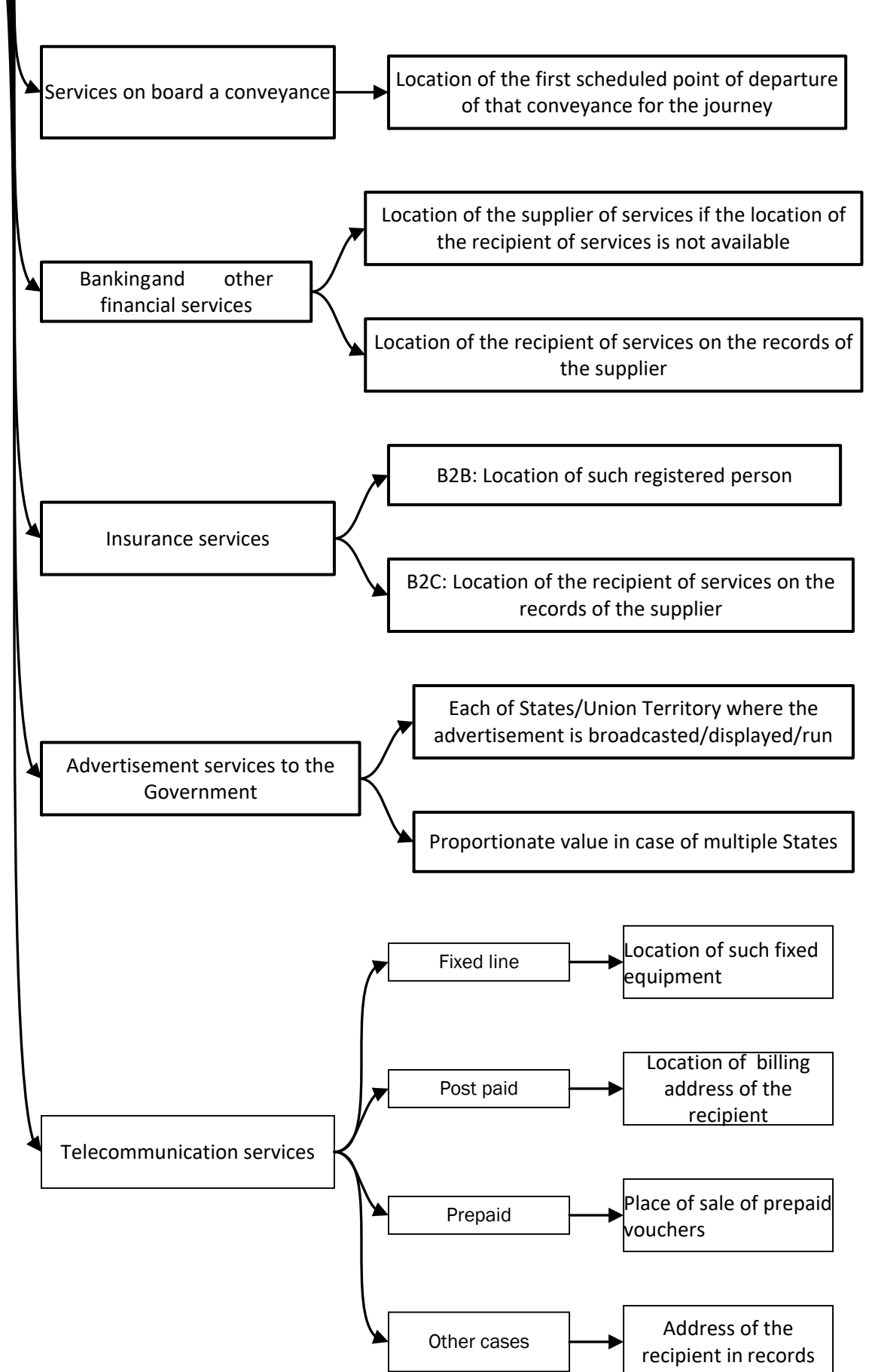
Place of Supply of Services- Important definitions

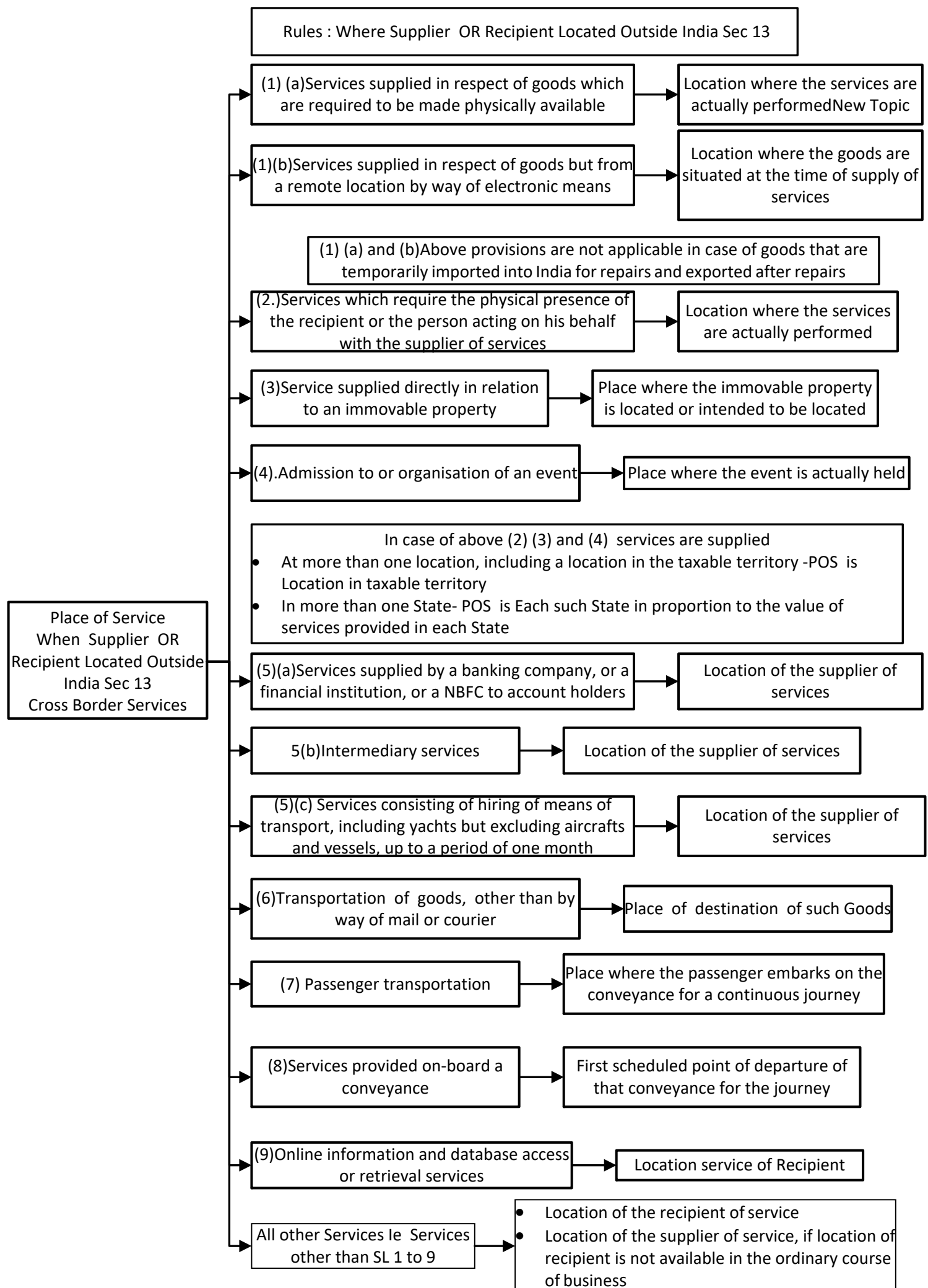


Old Relevant topic Place of provision of Service Rules



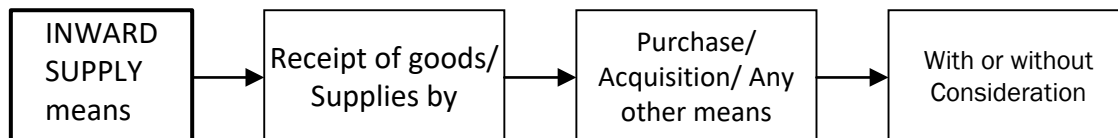
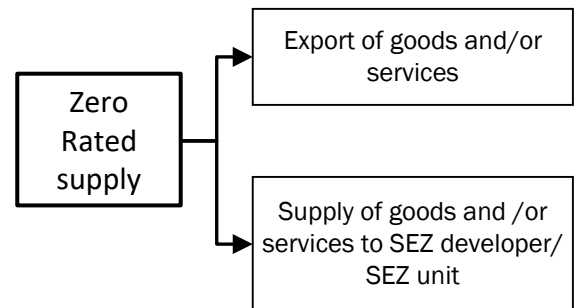
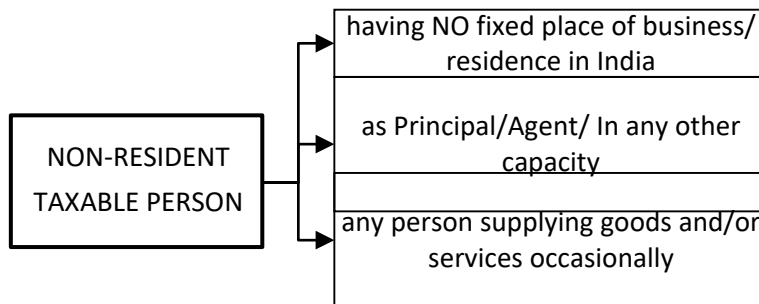
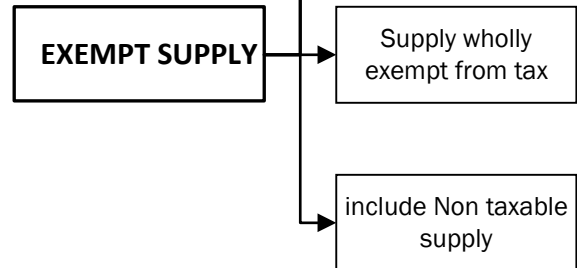
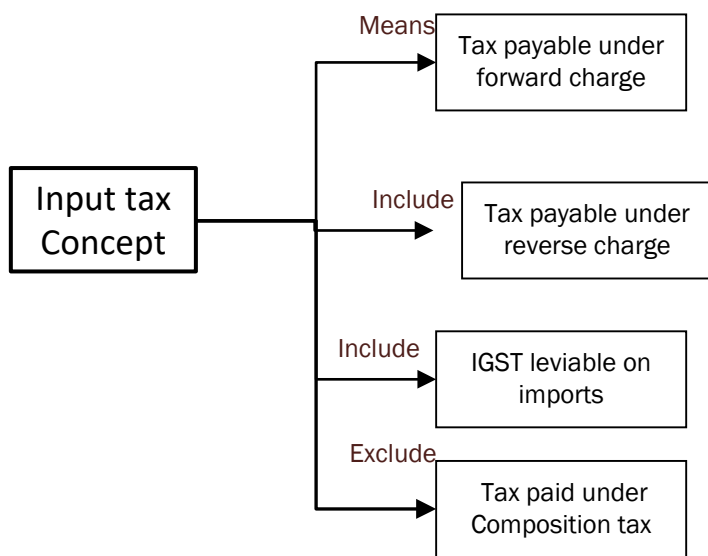
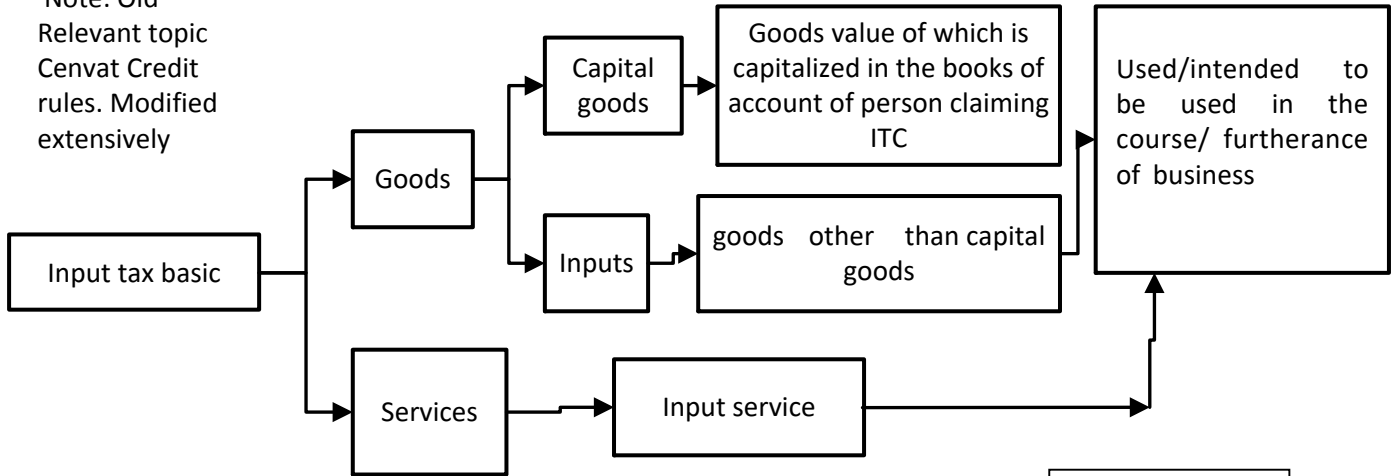


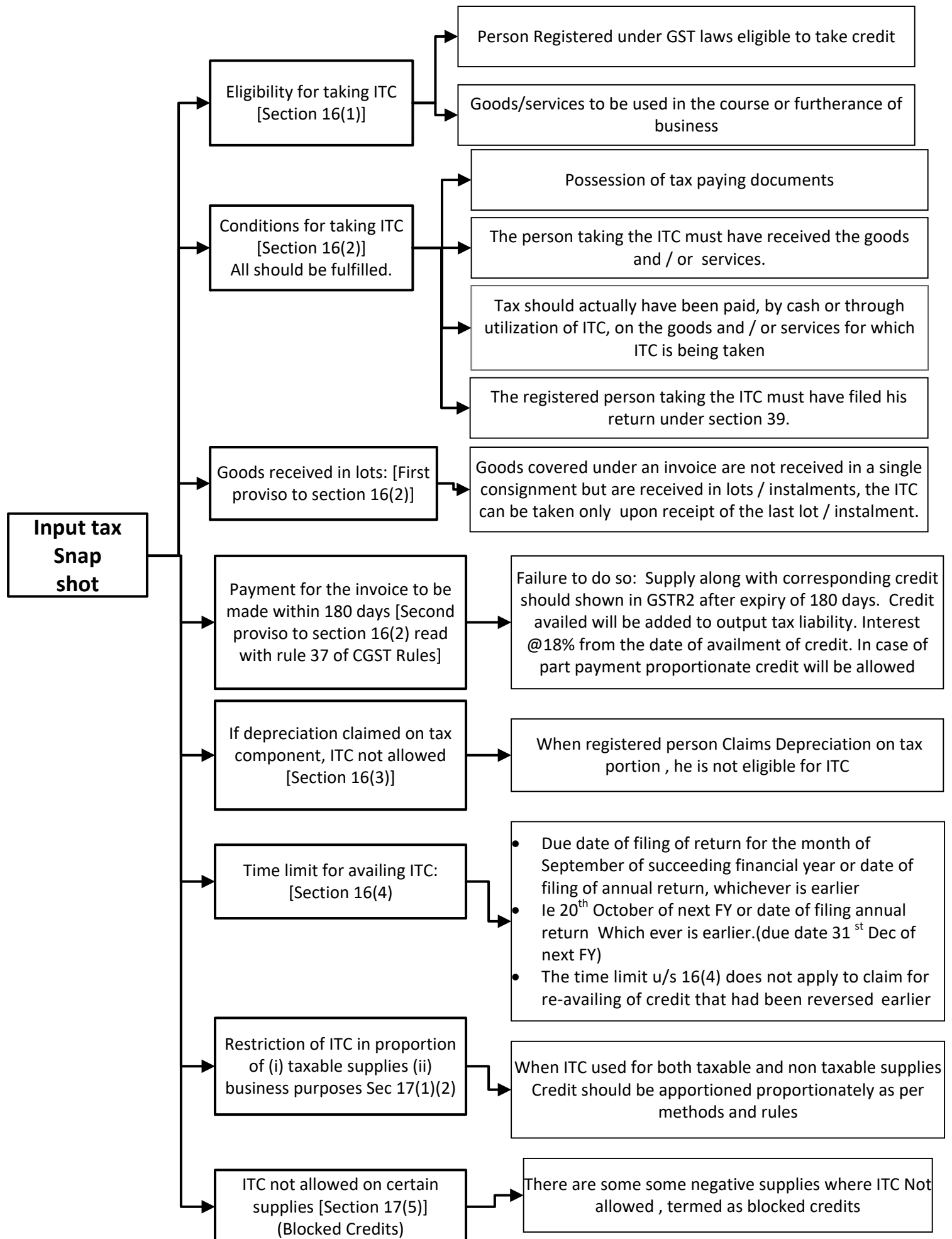


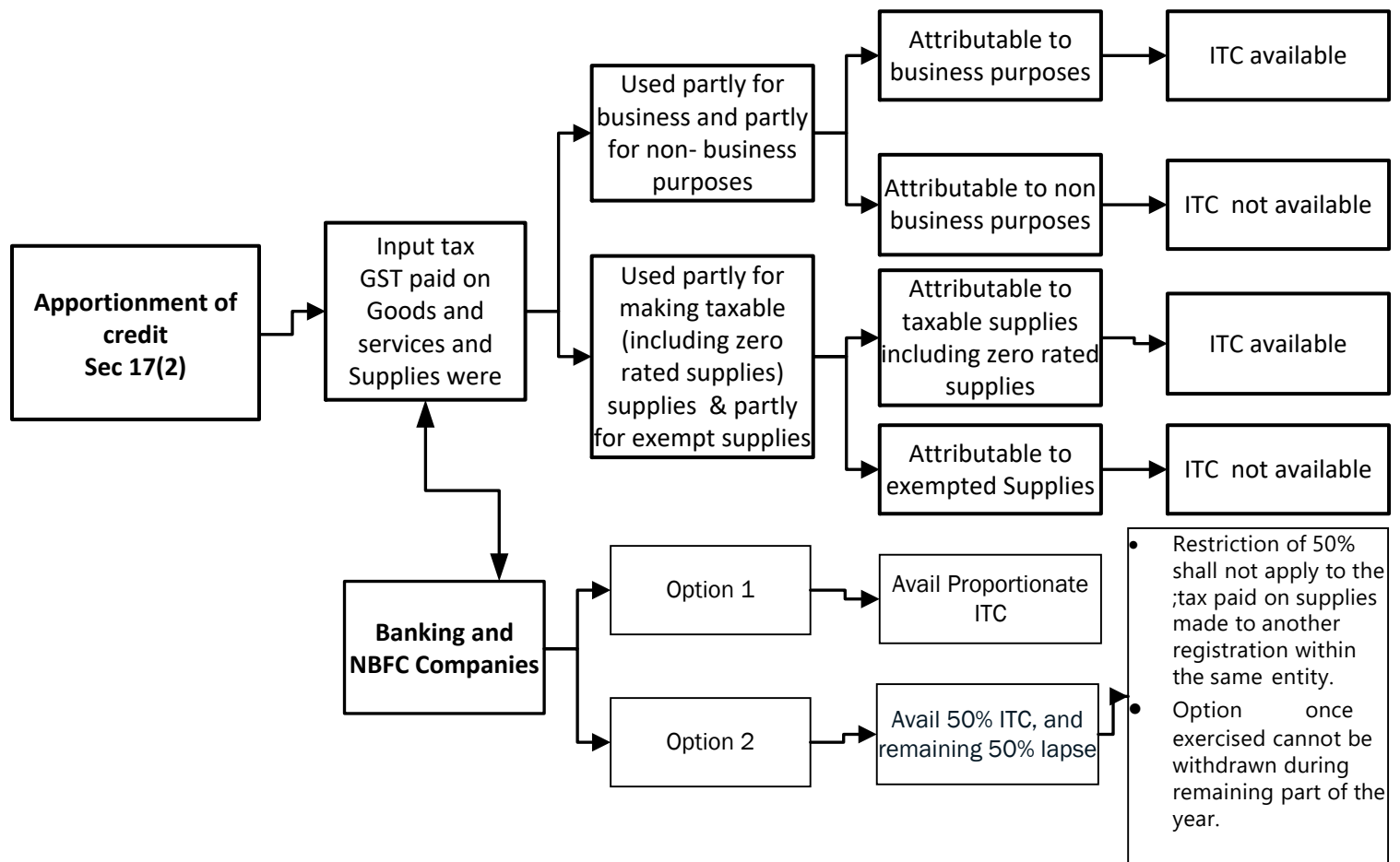


Input tax Basic Definitions

Note: Old Relevant topic Cenvat Credit rules. Modified extensively

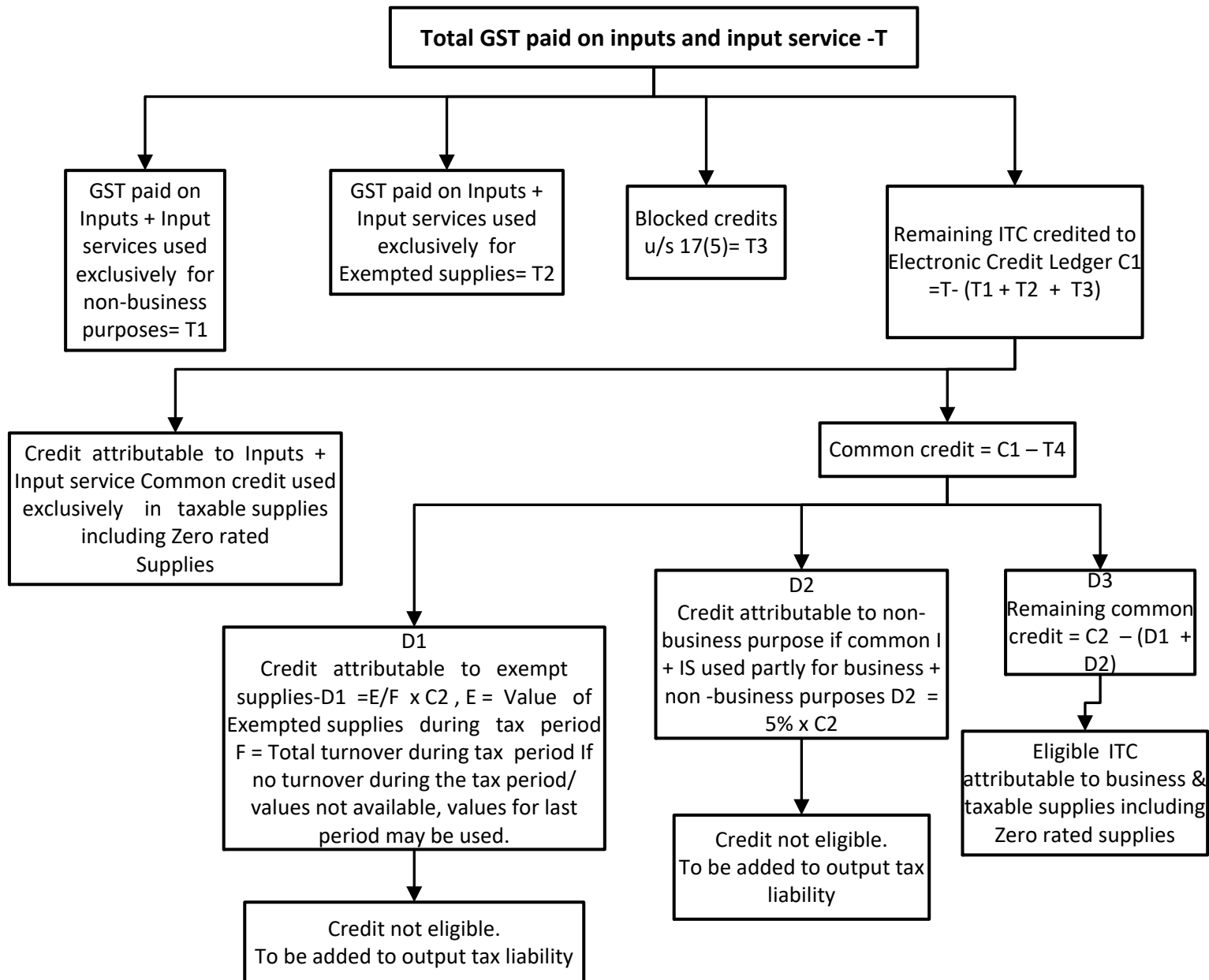






Exempt supplies include supplies charged to tax under reverse charge, transactions in securities, sale of land and sale of building when entire consideration is received post completion certificate.

Apportionment of common credit in case of inputs and Input service



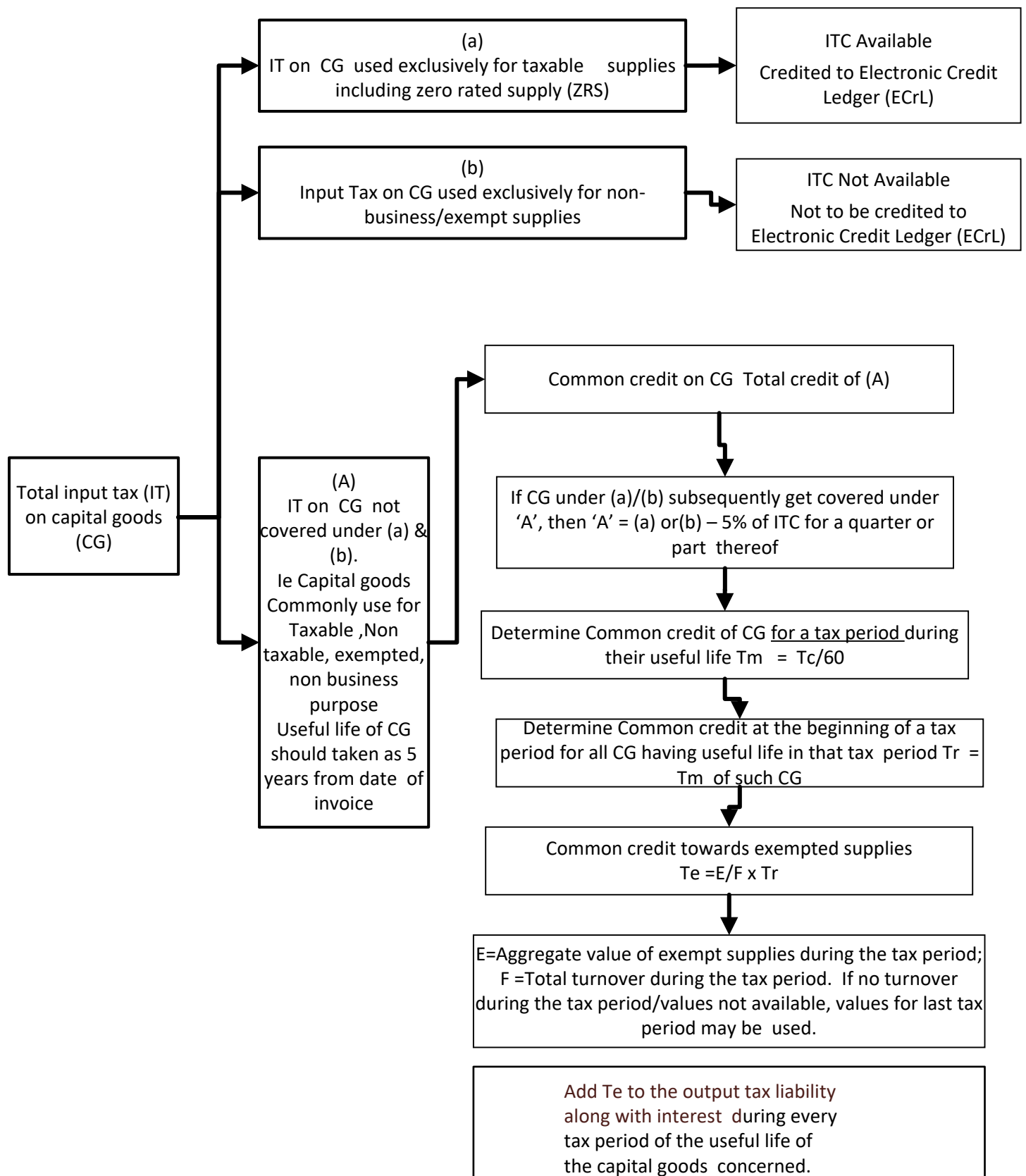
(Exempt supplies include reverse charge supplies, transactions in securities, sale of land and sale of building when entire consideration is received after CC. Aggregate value of exempt supplies and total turnover exclude the Central excise duty, State excise duty & VAT.

- C_3 will be computed separately for ITC of CGST, SGST/ UTGST and IGST.
- $\sum (D_1 + D_2)$ will be computed for the whole financial year, by taking exempted turnover and aggregate turnover for the whole financial year. If this amount is more than the amount already added to output tax liability every month, the differential amount will be added to the output tax liability in any of the month till September of succeeding year along with interest @ 18% from 1st April of succeeding year till the date of payment.
- If this amount is less than the amount added to output tax liability every month, the additional amount paid has to be claimed back as credit in GSTR 3 of any month till September of the succeeding year.

The aggregate value of exempt supplies exclude

- the value of services by way of accepting deposits, extending loans or advances in so far as the consideration is represented by way of interest or discount, except in case of a banking company or a financial institution including a non-banking financial company, engaged in supplying services by way of accepting deposits, extending loans or advances; and
- the value of supply of services by way of transportation of goods by a vessel from the customs station of clearance in India to a place outside India.

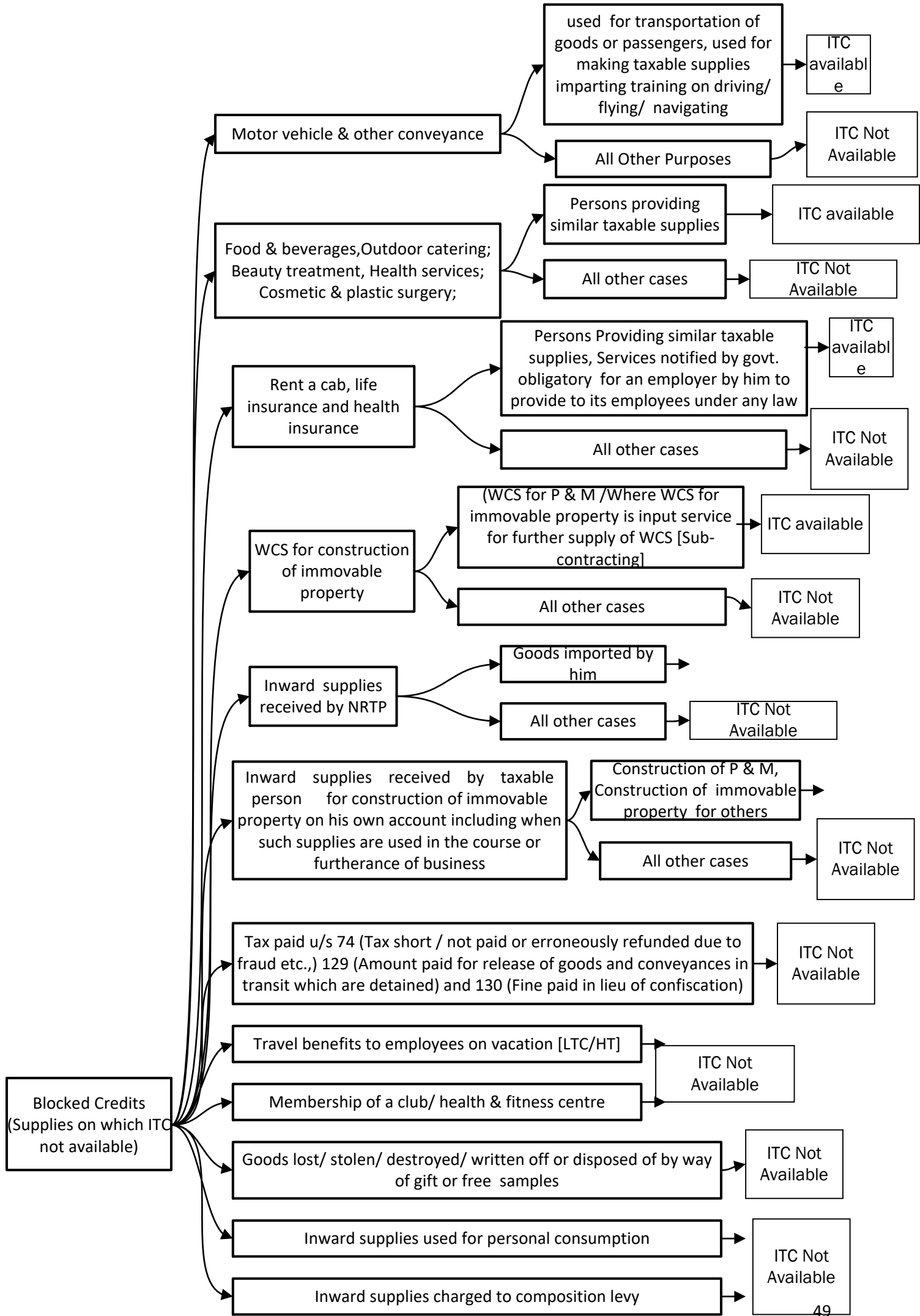
Apportionment of Common Credit in case of Capital goods Rule 43 of CGST



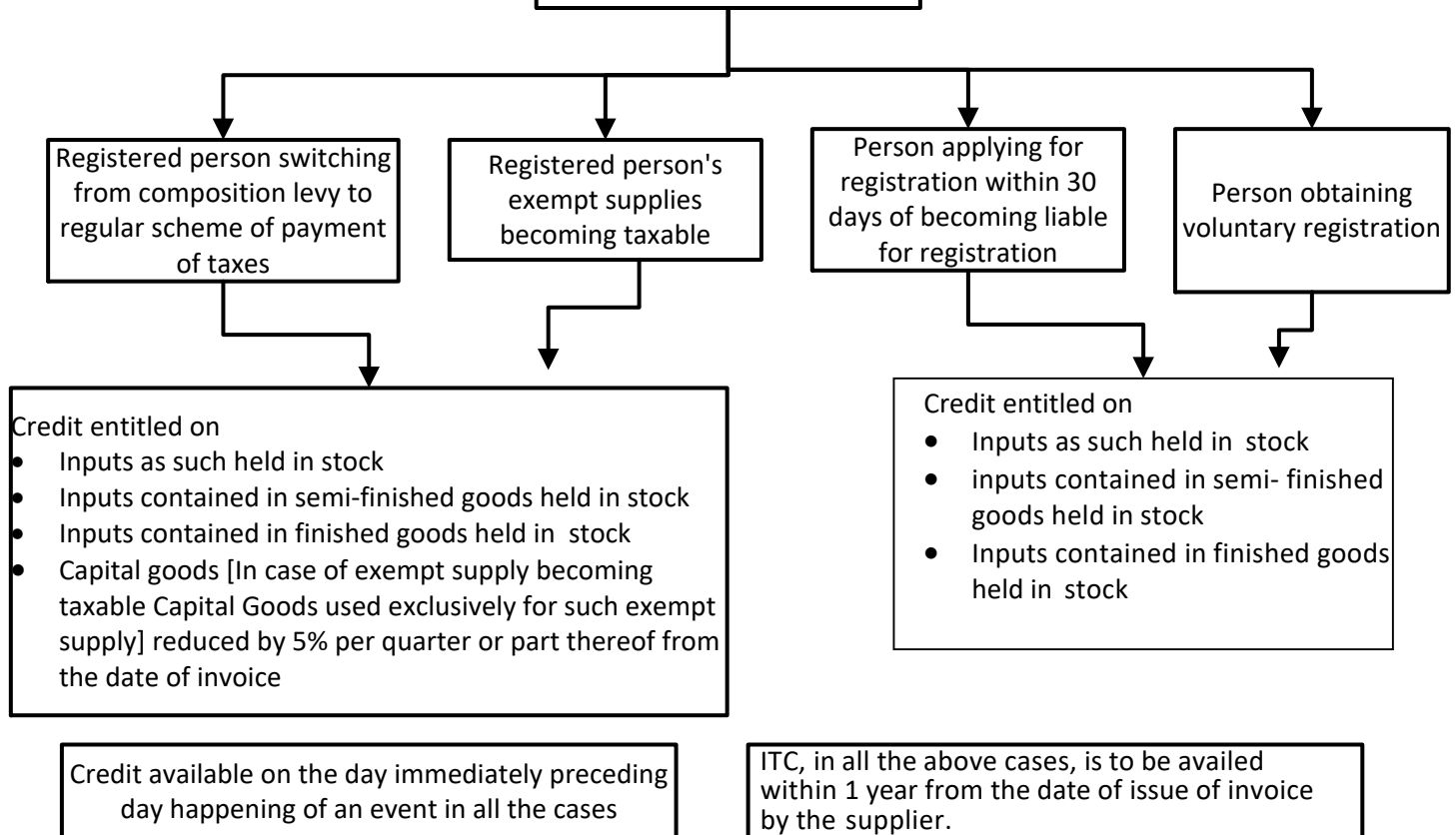
T_e will be computed separately for ITC of CGST, SGST/ UTGST and IGST.

Exempt supplies include reverse charge supplies, transactions in securities, sale of land and sale of building when entire consideration is received after completion certificate.

Aggregate value of exempt supplies and total turnover excludes the central excise duty, State excise duty & VAT.

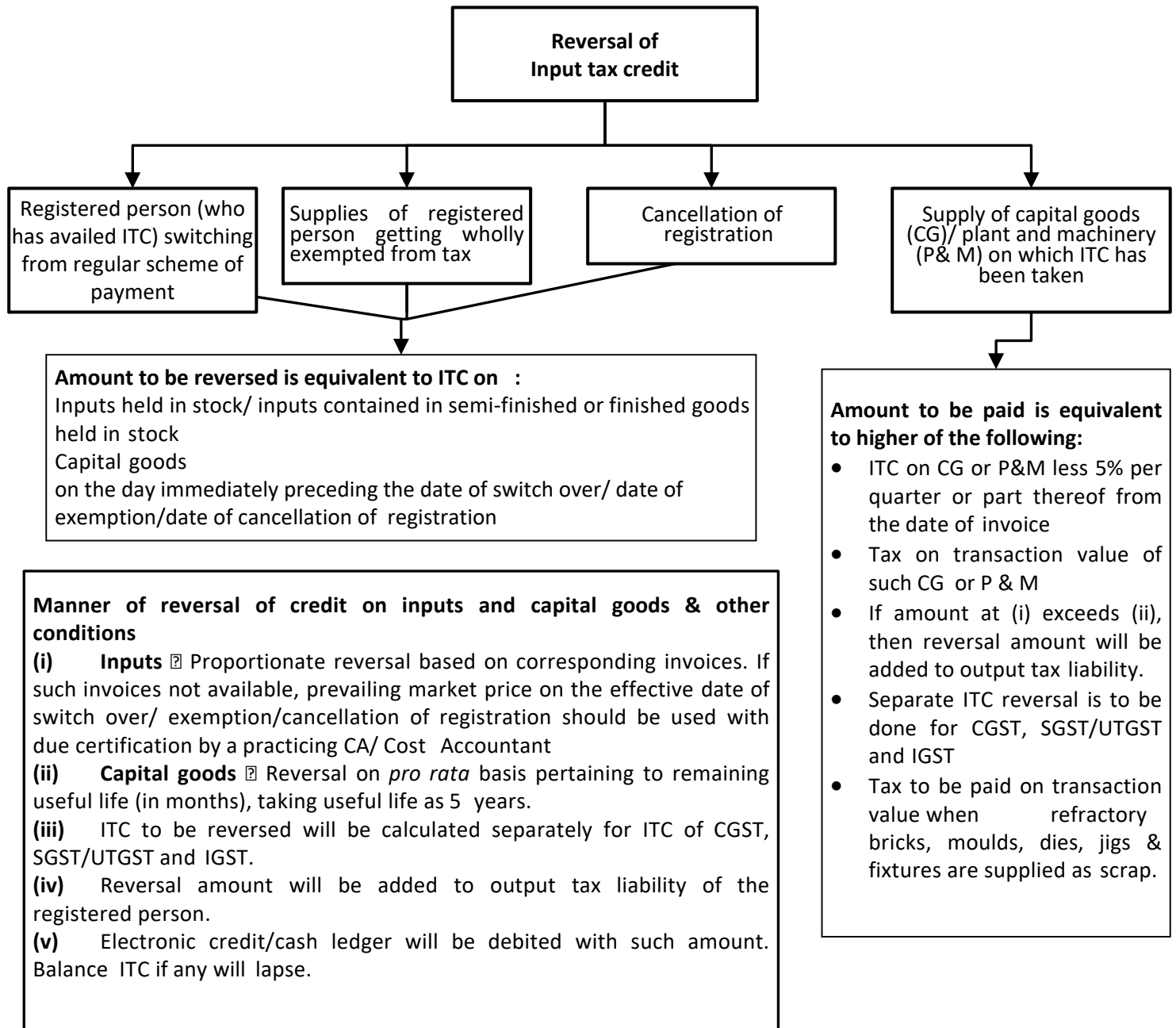


Eligibility of Input tax credit

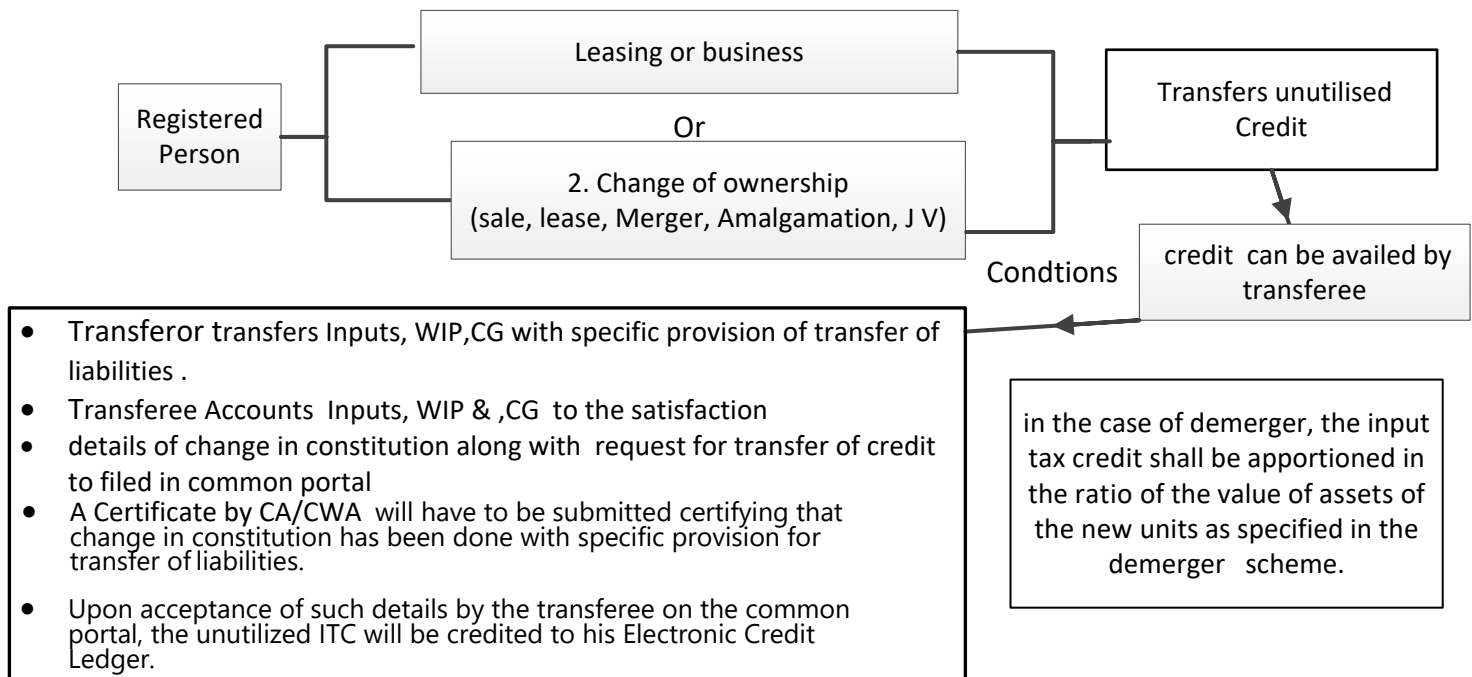


Conditions for availing above credit:

- Filing of electronic declaration giving details of inputs held in stock/contained in semi-finished goods and finished goods held in stock and capital goods on the days immediately preceding the day on which credit becomes eligible.
- Declaration has to be filed within 30 days from becoming eligible to avail credit.
- Details in (i) above to be certified by a CA/ Cost Accountant if aggregate claim of CGST, SGST/ IGST credit is more than ₹ 2,00,000.



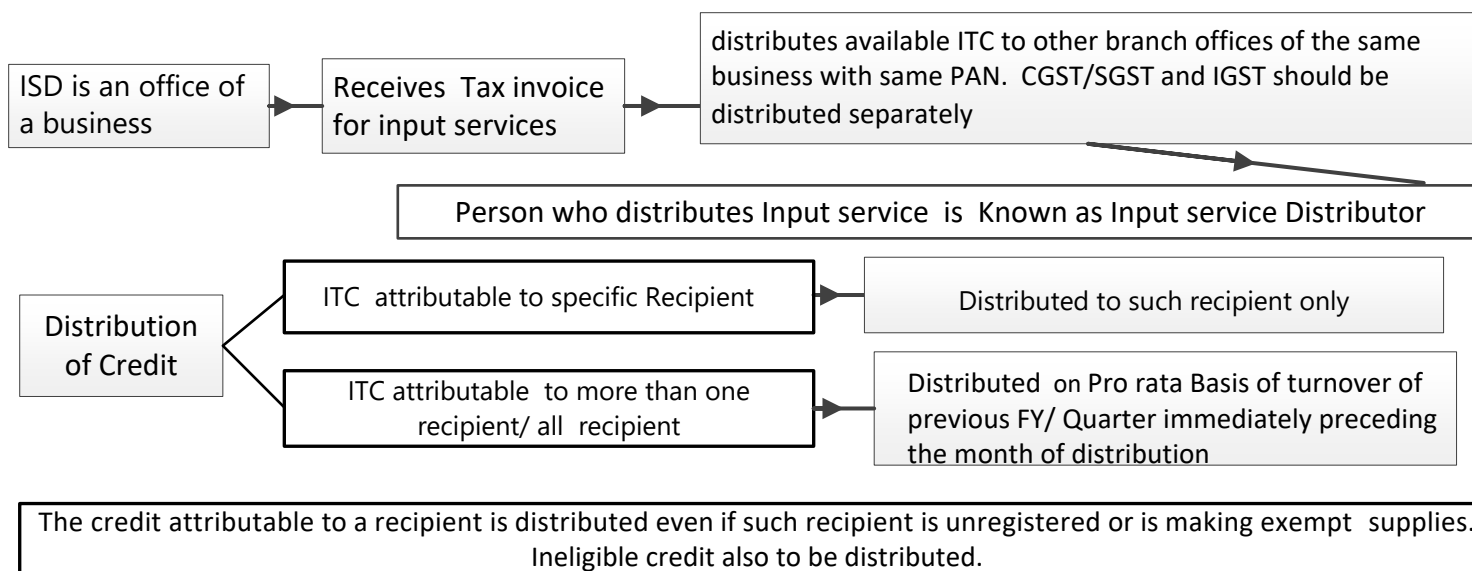
Transfer of Unutilised Credit



Procedure and ITC on goods sent for job work Sec 19

- Principal can take credit o goods (inputs and capital goods) sent for job work.
- Credit can be taken even if t said goods are sent directly t job worker without being first brought to the principal' place of business
- The inputs and/or capital goods are required to be sent to the job worker under the cover of a challan issued by the principal with prescribed form
- The challan needs to be issued even for the inputs or capital goods sent directly to the job worker
- Time limit for return of goods sent for job work/supply from job worker's place of business
 - Inputs - 1 year/ Capital goods - 3 years from the date of sending the same for job work or from the date of receipt of the same by the job worker
- On failing to comply with the time limit for return of goods, the goods will be deemed to be supplied to the job worker on the day they were sent out.
- Principal is liable to pay tax along with applicable interest on such supply.
- Time-limit for return of goods do not apply to moulds and dies, jigs and fixtures or tools sent out for job work.
- The details of various challans relating to goods sent to /received from job worker or sent from one job worker to another job worker are to be included in quarterly Form GST ITC 04 submitted by 25th day of the month succeeding the relevant quarter.
- CGST Commissioner or SGST/UTGST Commissioner to grant extension of time period for furnishing of the said details **Notification No. 51/2017 CT dated 28.10.2017**

Distribution of Credit by Input Service Distributor Sec 20 and Rule 39



Illustration

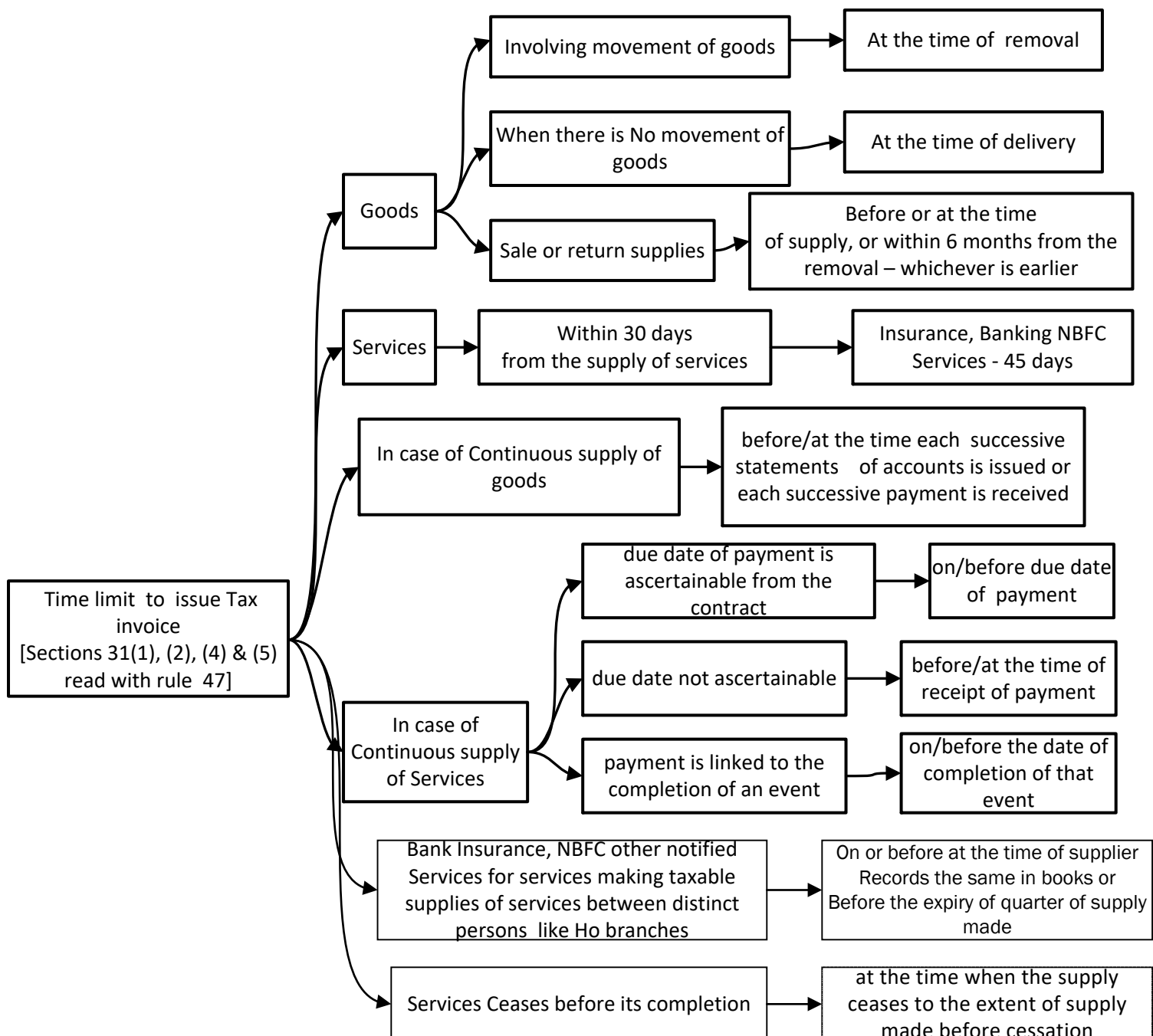
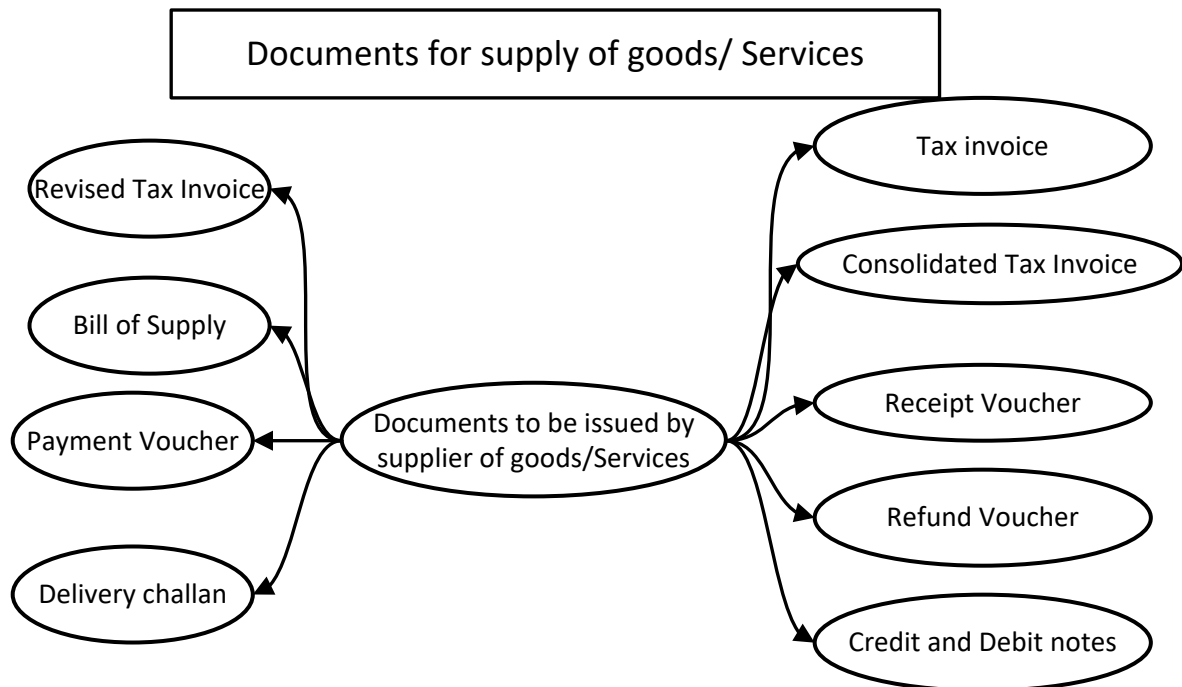
XYZ Ltd, having its head Office at Chennai is registered as ISD. It has three units in different cities situated in different States namely 'Hyderabad, Bangalore' and Cochin. M/s XYZ Ltd furnishes the following information. CGST paid on services used only for Chennai Unit: ` Rs. 60,000 IGST, CGST & SGST paid on services used for all units: Rs.2,40,000/-Turnover of the units for the relevant period are as follows

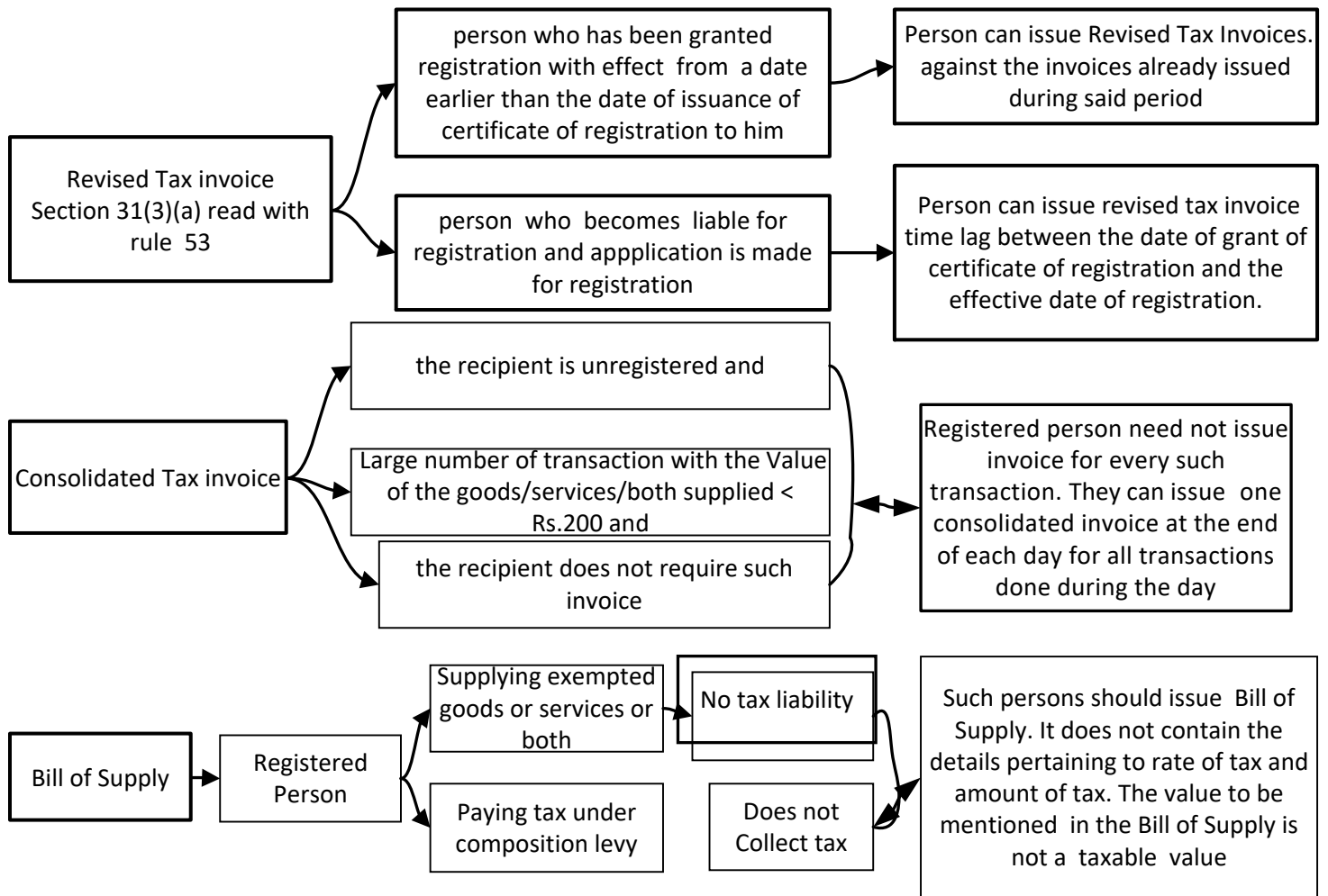
Place	Turnover in Rs.	Particulars	Total Credit	Distribution of total credit			
				Chennai	Hyderabad	Bangalore	Cochin
Chennai	5,00,00,000	CGST Credit	60,000	60,000	NIL	NIL	NIL
Hyderabad	8,00,00,000	IGST Credit	2,40,000	40,000	64,000	80,000	56,000
Bangalore	10,00,00,000	turnover					
Cochin	7,00,00,000	ratio					
Total Turnover	30,00,00,000						

CA N.Rajasekhar FCA,DISA(ICAI) Chennai 9444019860, rajdhost@yahoo.com

Procedure for ISD

- Should register as ISD. He cannot accept supplies under reverse charge mechanism. In such case he need a separate registration as a tax payer.
- The ISD has to issue an ISD invoice, as prescribed in rule 54(1) of the CGST Rules, for distributing ITC. It should be clearly indicated in such invoice that it is issued only for distribution of ITC.
- The ISD needs to issue a ISD credit note, for reduction in credit if the distributed credit gets reduced for any reason.
- The additional ITC on account of issue of a debit note to the ISD is distributed by the ISD
- If the ISD is a banking company/ financial institution including NBFC, the document for distributing credit need not be serially numbered.
- ITC available for distribution in a month is to be distributed in the same month.
- Details of distribution of credit and all ISD invoices issued should be furnished by ISD in monthly GSTR-6 within 13 days after the end of the month.
- The details in the returns are made available to the respective recipients in their GSTR 2A.The recipients may include these in its GSTR- 2 and take credit.
- An ISD is not required to file annual return.
- If the ISD has distributed excess credit to any recipient, the excess will be recovered from the recipient with interest as if it was tax not paid by initiating action under section 73 or 74

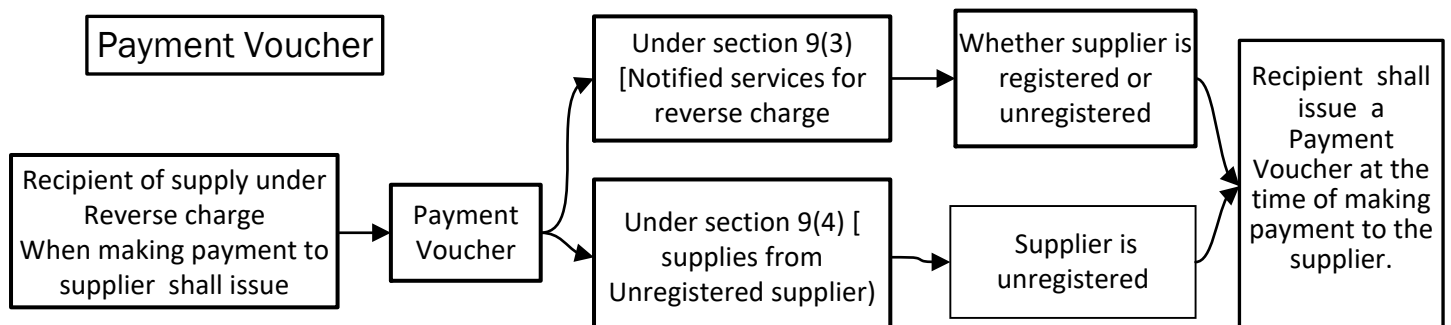
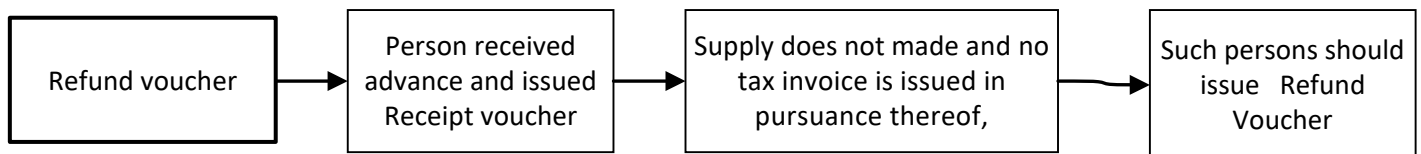
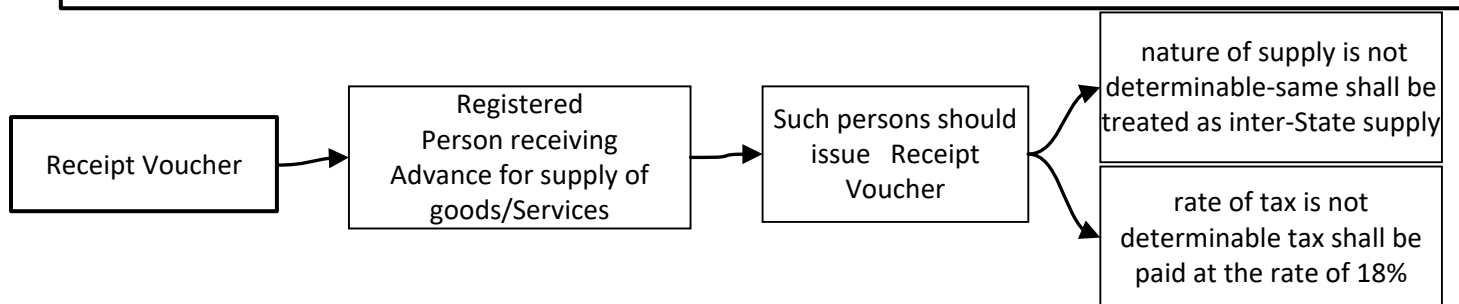


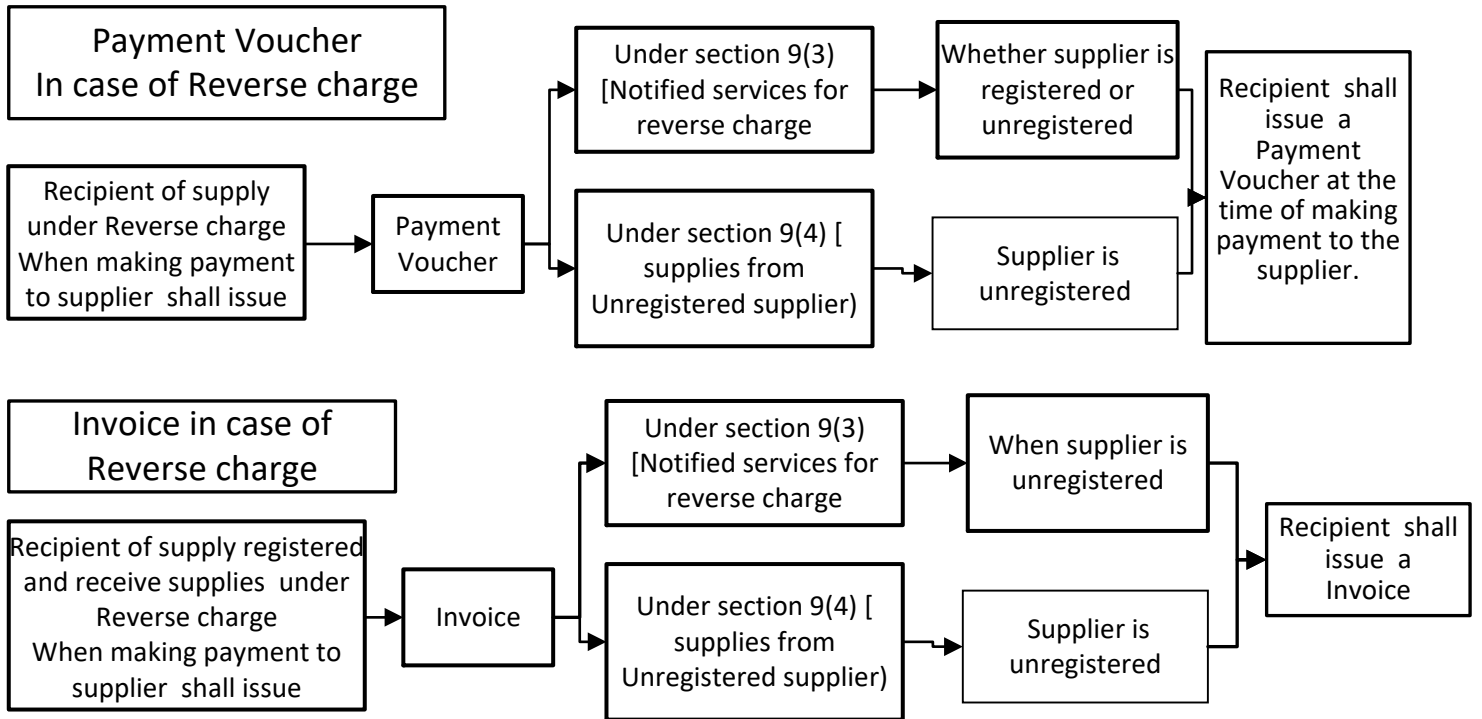


Invoice-cum-bill of supply: Notification No. 45/2017 - Central Tax dated 13th October 2017 -

If a registered person is supplying taxable as well as exempted goods/services to an unregistered person, then he can issue a single "invoice-cum-bill of supply" for all such supplies.

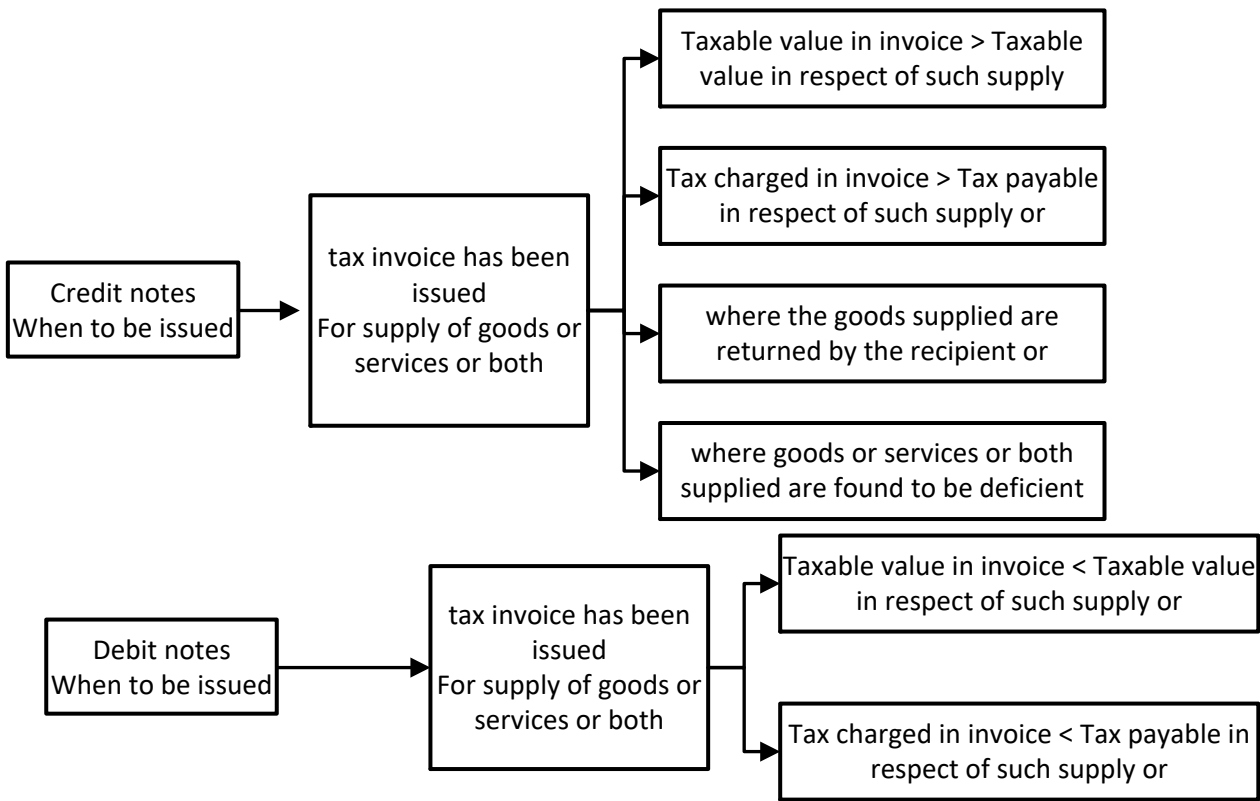
Insurer/banking company/financial institution, including NBFC can issue a consolidated tax invoice at month end for the supply made during that month Notification No. 55/2017 CT dated 15.11.2017]





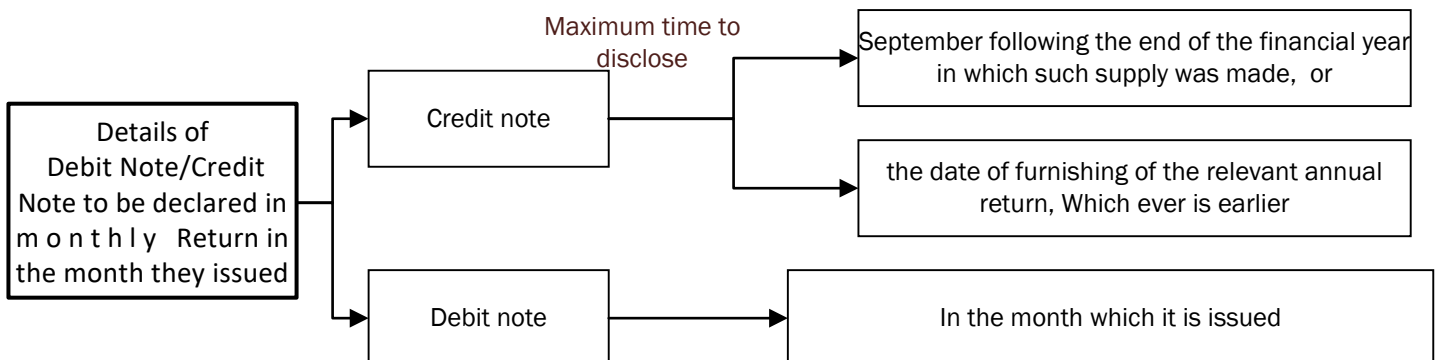
Debit notes and Credit Notes Sec 34 CGST ACT 2017

Registered Supplier of goods or services or both shall issue Credit or Debit notes to Recipient of goods or services or both



Debit note shall include a supplementary invoice.

Particulars of the Debit and Credit Notes are same as the particulars of revised tax invoices.



Contents of Tax Invoice	
[Subject to rule 54 (i.e. other than input service Distributor, Banking or NBFC and so on) Section 31 read with Rule 46 of the CGST Rules, 2017] There is no format prescribed for an invoice, however, invoice rules makes it mandatory for an invoice to have the following fields (only applicable field are to be filled)	
1	Name, address and GSTIN of the supplier
2	A consecutive serial number, in one or multiple series, containing alphabets or numerals or special characters like hyphen or dash and slash symbolized as “-” and “/” respectively, and any combination thereof, unique for a financial year
3	Date of its issue
4	Name, address and GSTIN or UIN, (Unique Identity Number for specialized agency like UNO) if registered, of the recipient
5	If the recipient is unregistered and value of supply
	Rs. 50,000 or more
	Less than Rs.50,000
Particulars of Invoice	
	Name and address of the recipient and the address of delivery, along with the name of State Code.
	Above details should be given only if unregistered recipient ask for
6	Name and address of the recipient and the address of delivery, along with the name of State and its code, if such recipient is un-registered and where the value of taxable supply is fifty thousand rupees or more
7	HSN code of goods or Accounting Code of Services
8	Description of goods or services
9	Quantity in case of goods and unit or Unique Quantity Code there of
10	Total value of supply of goods or services or both
11	Taxable value of supply of goods or services or both, taking into account the discount or abatement, if any
12	Rate of tax (Central tax, State tax, Integrated tax, union territory tax or cess)
13	Amount of tax charged in respect of taxable goods or services (Central tax, State tax, Integrated tax, union territory tax or cess)
14	Place of supply along with the name of State, in case of a supply in the course of inter-State trade or commerce
15	Address of delivery where the same is different from the place of supply
16	Whether the tax is payable on reverse charge basis
17	Signature or digital signature of the supplier or his authorized representative

- ❖ A registered person may not issue a Tax Invoice if: Value of the goods/services/both supplied < Rs.200, the recipient is unregistered; and the recipient does not require such invoice.
- ❖ Instead such registered person shall issue a **Consolidated Tax Invoice** for such supplies at the close of each day in respect of all such supplies.

where a registered person is supplying taxable as well as exempted goods or services or both to an unregistered person, a single “**invoice-cum-bill of supply**” may be issued for all such supplies. This rule is notwithstanding anything contained in rule 46 or rule 49 or rule 54 of CGST Rules.

[Notification No. 45/2017 CT dated 13.10.2017]

Invoice in case of export of goods or services [Third proviso to rule 46]

- ❖ In the case of the export of goods or services, the invoice shall carry an endorsement “SUPPLY MEANT FOR EXPORT ON PAYMENT OF INTEGRATED TAX” or “SUPPLY MEANT FOR EXPORT UNDER BOND OR LETTER OF UNDERTAKING WITHOUT PAYMENT OF INTEGRATED TAX, as the case may be
- ❖ Particulars of an Export Invoice are same as a Tax Invoice. However, where recipient is unregistered and value of supply is Rs.50,000 or more, instead of name of State and its code, in case of an export invoice, name of the country of destination is to be mentioned

Particulars of Revised Tax Invoice

The word “Revised Invoice”, wherever applicable, indicated prominently;
Name, address and GSTIN of the supplier;
Nature of the document;
A consecutive serial number not exceeding 16 characters, in one or multiple series, containing alphabets or numerals or special characters -hyphen or dash and slash and any combination thereof, unique for a FY;
Date of issue of the document;
Name, address and GSTIN or UIN, if registered, of the recipient;
Name and address of the recipient and the address of delivery, along with the name of State and its code, if such recipient is un-registered;
Serial number and date of the corresponding tax invoice or, as the case may be, bill of supply;
Value of taxable supply of goods or services, rate of tax and the amount of the tax credited/debited to the recipient
Signature/digital signature of the supplier/his authorized representative

Particulars of Bill of Supply

Name, address and GSTIN of the supplier;
A consecutive serial number not exceeding 16 characters, in one or more multiple series, containing alphabets or numerals or special
characters -hyphen or dash and slash and any combination thereof, unique for a FY;
Date of its issue;
Name, address and GSTIN or UIN, if registered, of the recipient;
HSN Code for goods or services;
Particulars of Refund Voucher
Particulars of Receipt Voucher
Signature/digital representative.

Particulars of Payment Voucher
Name, address and GSTIN of the supplier if registered;
A consecutive serial number not exceeding 16 characters, in one or multiple series, containing alphabets or numerals or special characters -hyphen or dash and any combination thereof, unique for a FY
Date of its issue;
Name, address and GSTIN of the recipient;
Description of goods or services;
Amount paid;
Rate of tax (central tax, State tax, integrated tax, Union territory tax or cess);
Amount of tax payable in respect of taxable goods or services (central tax, State tax, integrated tax, Union territory tax or cess);
Place of supply along with the name of State and its code, in case of a supply in the course of inter-State trade or commerce; and
Signature/digital signature of supplier/his authorized representative

Particulars/Contents of Delivery Challan	
1	Date and number of the delivery challan
2	Name, address and GSTIN of the consigner, if registered
3	Name, address and GSTIN or UIN of the consignee, if registered
4	HSN code and description of goods,
5	Quantity (provisional, where the exact quantity being supplied is not known)
6	Taxable value
7	Tax rate and tax amount – central tax, state tax, integrated tax, union territory tax or cess, where the transportation is for supply to the consignee
8	Place of supply, in case of inter-state movement
9	Signature

Provisions for issuance of invoice/debit note/credit note by registered taxable person (having same PAN and State code as ISD) to ISD to transfer the credit of common input services [Notification No. 3/2018 CT dated 23.01.2018]

A new sub-rule (1A) has been inserted in rule 54 of CGST Rules. The new sub-rule provides as under:

A registered person, having the same PAN and State code as an input service distributor (ISD), may issue an invoice/credit note/debit note to transfer the credit of common input services to the ISD, which shall contain the following details :-

(i) name, address and GSTIN of the registered person having the same PAN and same State code as the ISD;

(ii) a consecutive serial number not exceeding 16 characters, in one or multiple series, containing alphabets or numerals or special characters - hyphen or dash and slash symbolised as “-” and “/” respectively, and any combination thereof, unique for a financial year;

(iii) date of its issue;

(iv) GSTIN of supplier of common service and original invoice number whose credit is sought to be transferred to the ISD;

(v) name, address and GSTIN of the ISD;

(vi) taxable value, rate and amount of the credit to be transferred; and

(vii) signature or digital signature of the registered person or his authorised representative.

(b) The taxable value in the invoice issued under clause (a) shall be the same as the value of the common services.

Person-in-charge of the conveyance to carry a copy of the tax invoice/ bill of supply where such person is not required to carry an e-way bill [Notification No. 3/2018 CT dated 23.01.2018]

A new rule 55A - Tax invoice or bill of supply to accompany transport of goods, has been inserted in the CGST Rules. The new rule lays down that the person-in-charge of the conveyance shall carry a copy of the tax invoice or the bill of supply issued in accordance with the provisions of rules 46, 46A or 49 in a case where such person is not required to carry an e-way bill under these rules.

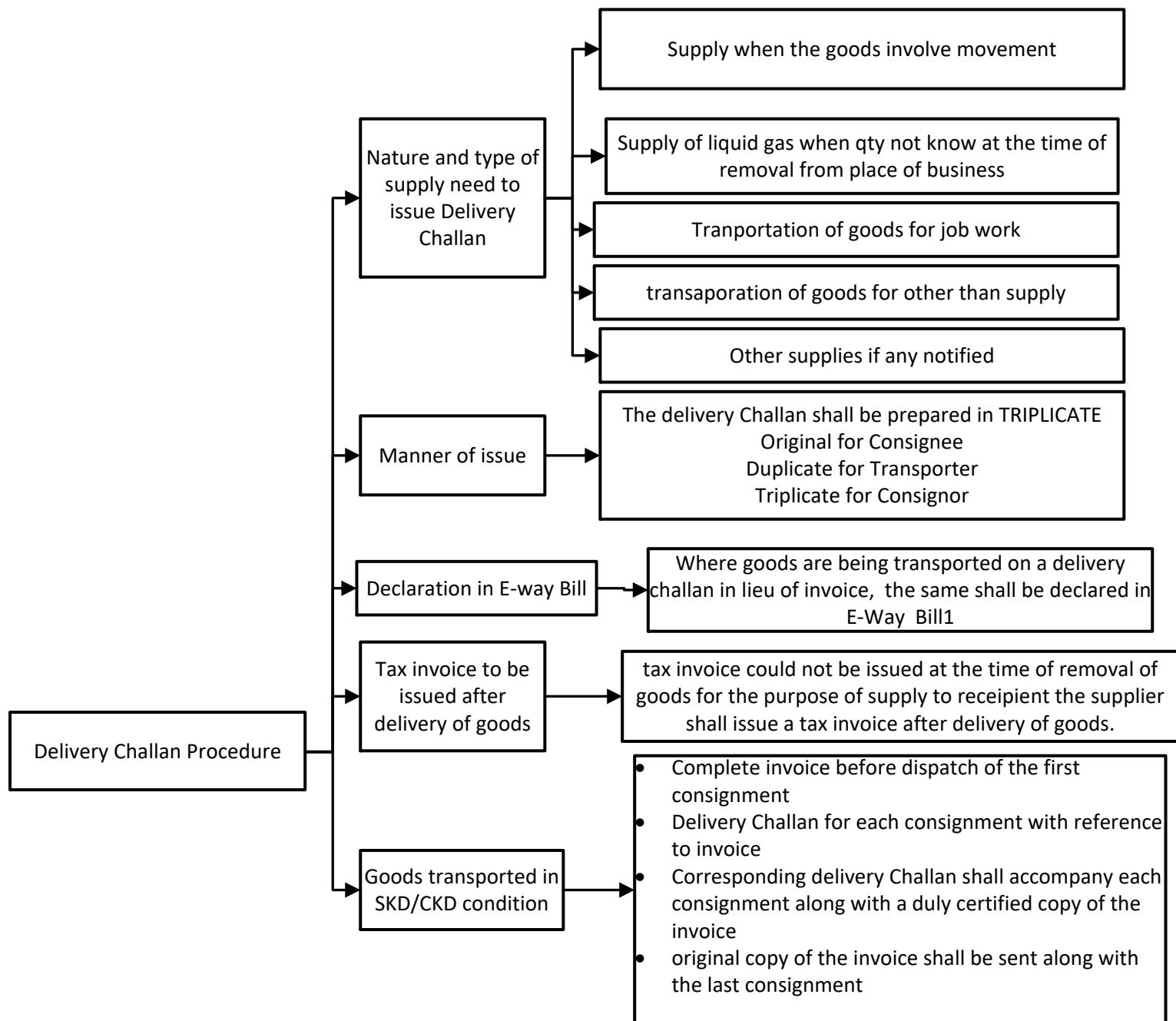
Clarification on issues wherein the goods are moved within the State or from the State of registration to another State for supply on approval basis

- ❖ Where the goods which are taken for supply on approval basis can be moved from the place of business of the registered supplier to another place within the same State or to a place outside the State on a delivery challan along with the e-way bill wherever applicable and the invoice may be issued at the time of delivery of goods.
- ❖ For this purpose, the person carrying the goods for such supply can carry the invoice book with him so that he can issue the invoice once the supply is fructified.
- ❖ It is further clarified that all such supplies, where the supplier carries goods from one State to another and supplies them in a different State, will be inter-state supplies and attract integrated tax in terms of section 5 of the IGST Act.
- ❖ It is also clarified that this clarification would be applicable to all goods supplied under similar situations.

[Circular No. 10/10/2017 GST dated 18.10.2017]

Delivery Challan

Rule 55 : Specifies the cases where at the time of removal of goods, goods may be removed on delivery challan and invoice may be issued after delivery



Particulars/Contents of Delivery Challan

Date and number of the delivery challan

Name, address and GSTIN of the consigner, if registered`

Name, address and GSTIN or UIN of the consignee, if registered

HSN code and description of `

Quantity (provisional, where the exact quantity being supplied is not known)

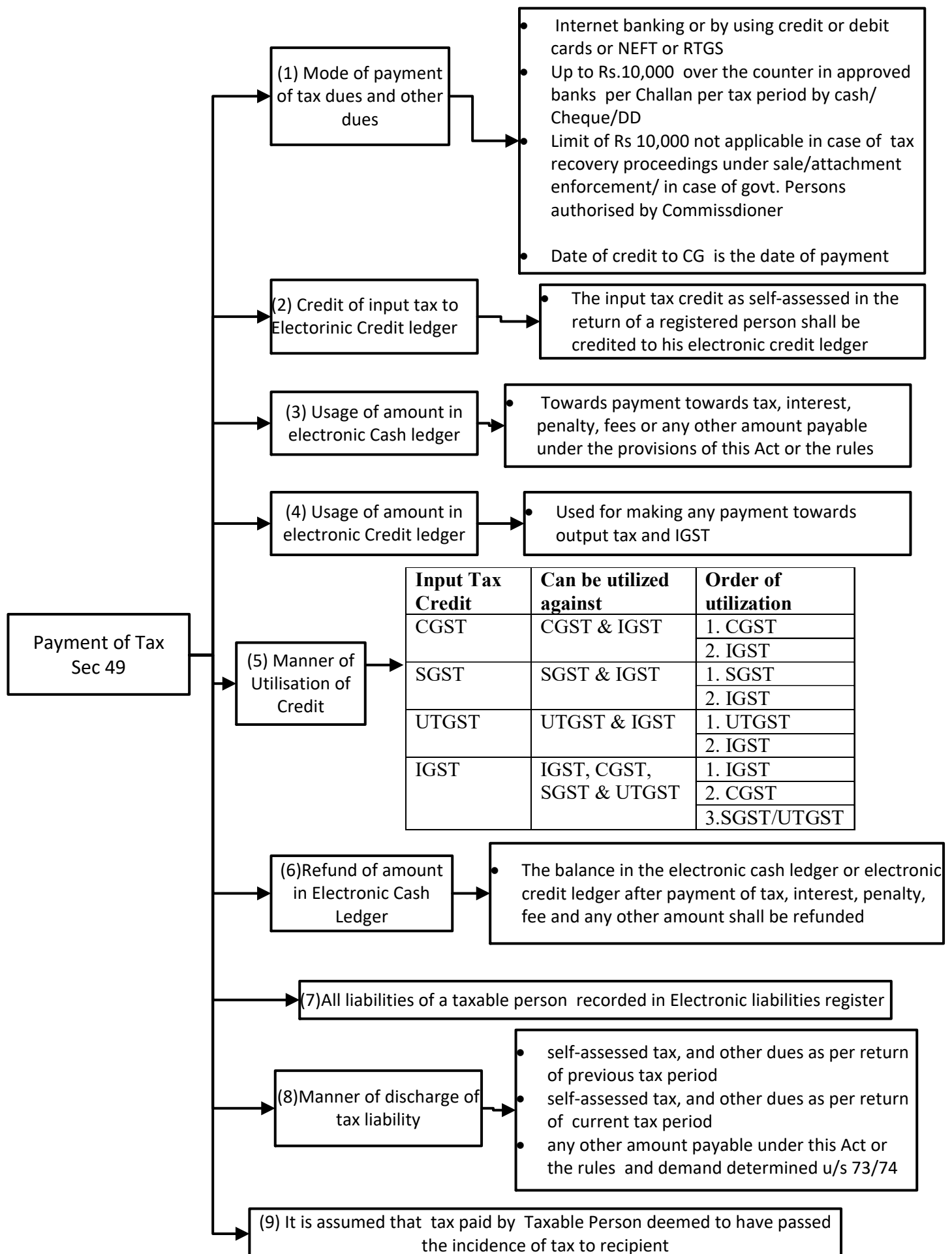
Taxable value

Tax rate and tax amount – central tax, state tax, integrated tax, union territory tax or cess, where the transportation is for supply to the consignee

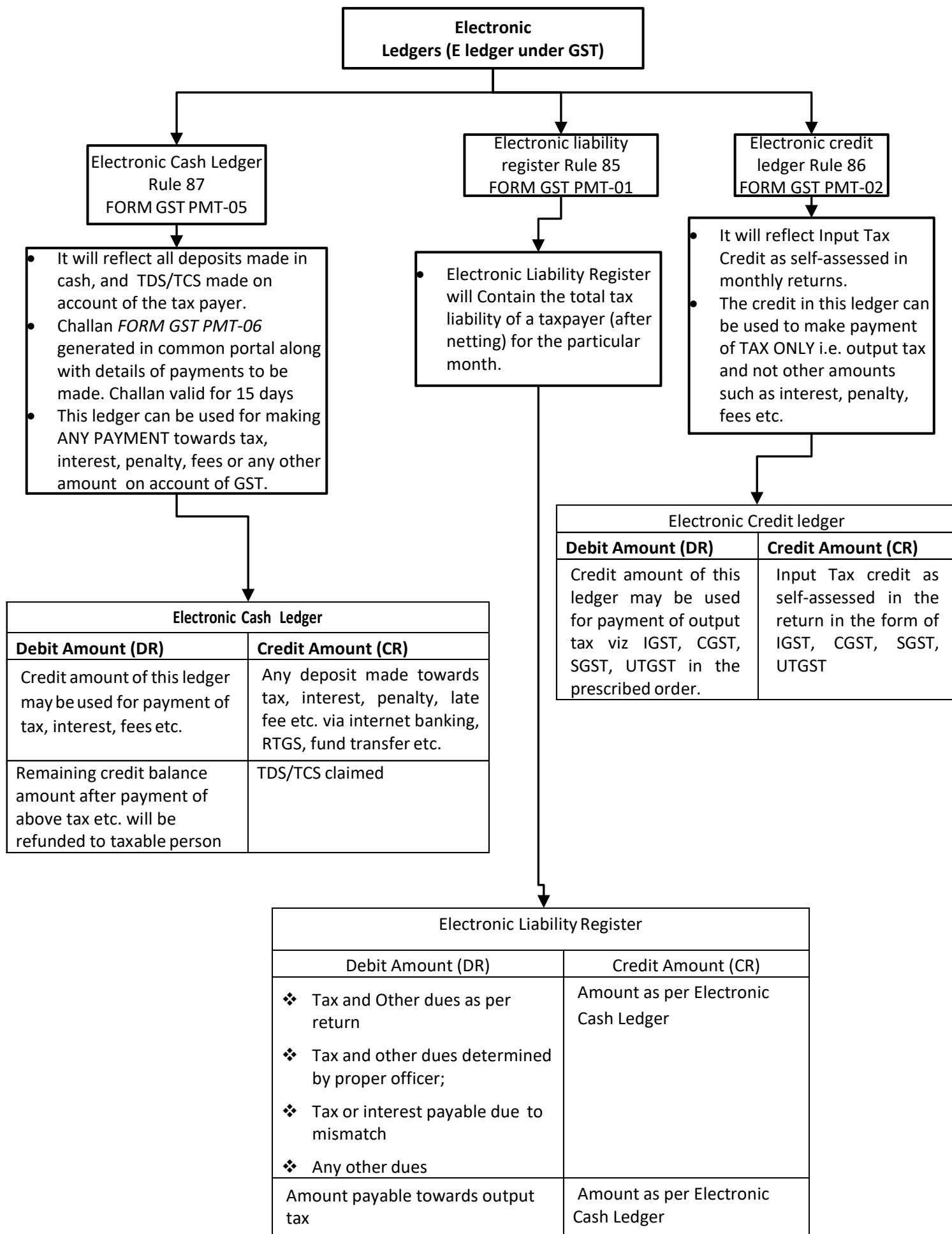
Place of supply, in case of inter-state movement

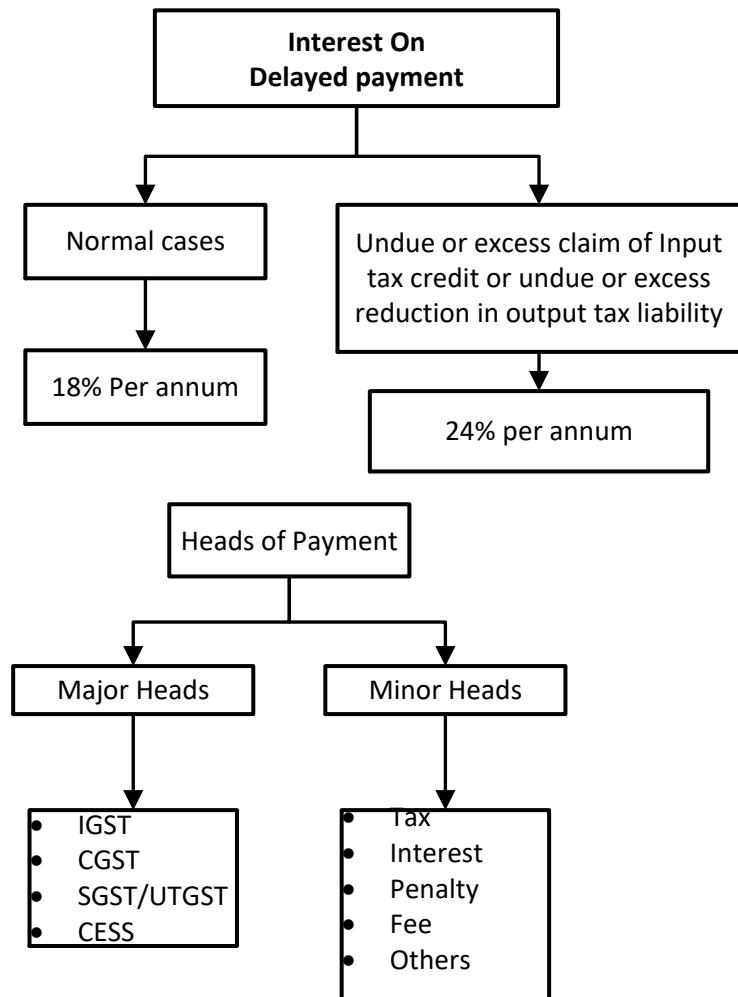
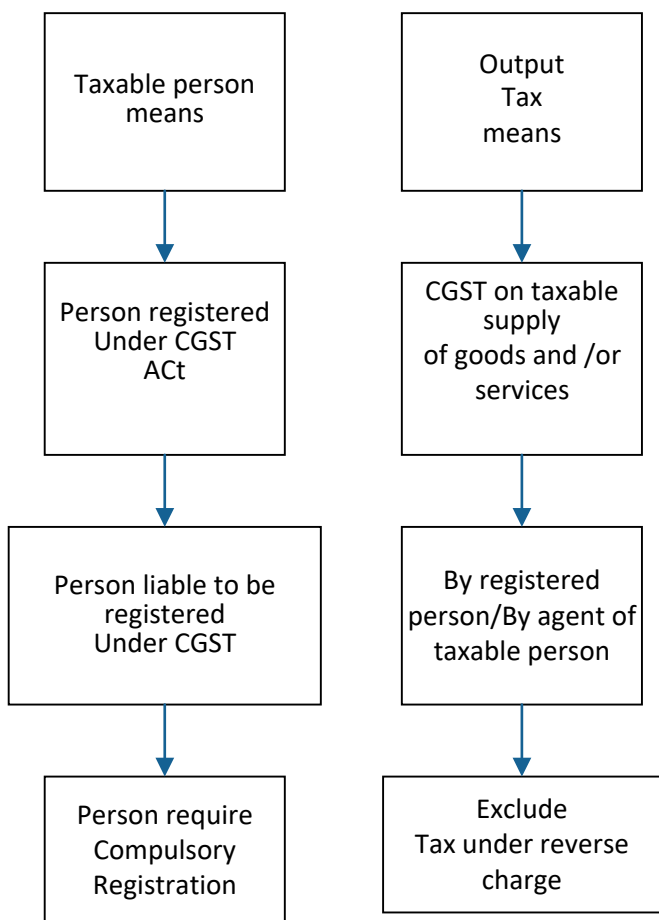
Signature

PAYMENT OF TAX, INTEREST, PENALTY AND OTHER AMOUNTS [SECTION 49]



- tax dues" means the tax payable under this Act and does not include interest, fee and penalty
- "other dues" means interest, penalty, fee or any other amount payable under this Act or the rules made there under.





Reverse Charge under GST

The following table provides a combination of Supplier of service and Service Recipient where the reverse charge of GST is applicable. Any other combination of Supplier of Service or Service Recipient, if the GST is not exempted the GST is payable by Supplier of Service.

1 Services of Goods Transport Agency (GTA)

S. No	Particulars	Particulars
1	Supplier of Service	GTA who has not paid CGST @ 6%
2	Service Recipient	Consignor or consignee who is (a) factory, society, registered dealer of excisable goods, body corporate, partnership firm, AOP and (b) who pays or is liable to pay freight either himself or through his agent for transportation of such goods in goods carriage
3	GST liability of Supplier of Service	NIL
4	GST liability of Service Recipient	100%
5	Explanation	The person who pays or is liable to pay freight for the transportation of goods by road in goods carriage, located in the taxable territory shall be treated as the person who receives the service for the purpose of this notification. i.e., If such a person is located in a non-taxable territory, the supplier of service shall be liable to pay GST

2.Services of Individual Advocate/ Senior Advocate,

S. No	Particulars	Particulars
1	Supplier of Service	An individual advocate including a senior advocate or firm of advocates.
2	Nature of Service	by way of representational services before any court, tribunal or authority, directly or indirectly
3	Service Recipient	Any business entity located in the taxable territory
4	GST liability of Supplier of Service	NIL
5	GST liability of Service Recipient	100%

legal service” means any service provided in relation to advice, consultancy or assistance in any branch of law, in any manner and includes representational services before any court, tribunal or authority.

3. Services of Arbitral tribunal to a business entity.

S. No	Particulars	Particulars
1	Supplier of Service	An arbitral tribunal
2	Service Recipient	Business entity turnover
3	GST liability of Supplier of Service	NIL
4	GST liability of Service Recipient	100%

4. Services provided by way of **sponsorship** to anybody corporate or partnership firm

S. No	Particulars	Particulars
1	Supplier of Service	Any person
2	Service Recipient	Anybody corporate or partnership firm located in the taxable territory
3	GST liability of Supplier of Service	NIL

4	GST liability of Service Recipient	100%
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5.All Taxable Services by Government or Local Authority excluding renting of immovable property and Postal, port, airport and railway services Notification No. 3/2018 CT (R) dated 25.01.2018 & Notification No. 3/2018 IT (R) dated 25.01.2018]

S. No	Particulars	Particulars
1	Supplier of Service	Central Government/State Government /Union Territory or Local Authority
2	Service Recipient	Any Business entity located in taxable territory
3	GST liability of Supplier of Service	NIL
4	GST liability of Service Recipient	100%

Supply of Service of Renting of immovable property by Central Government/State Government /Union Territory or Local Authority to a Registered person, GST is payable under reverse charge by recipient person i.e. by Registered Person

6. Services of director to company/Body Corporate

S. No	Particulars	Particulars
1	Supplier of Service	Director
2	Service Recipient	Company/Body Corporate located in taxable territory
3	GST liability of Supplier of Service	NIL
4	GST liability of Service Recipient	100%

7.Services supplied by an insurance agent to any person carrying on insurance business.

S. No	Particulars	Particulars
1	Supplier of Service	Insurance Agent
2	Service Recipient	Any person carrying on insurance business, located in the taxable territory
3	GST liability of Supplier of Service	NIL
4	GST liability of Service Recipient	100%

8 Services supplied by a recovery agent

S. No	Particulars	Particulars
1	Supplier of Service	A recovery agent
2	Service Recipient	A banking company or a financial institution or a non- banking financial company, located in the taxable territory
3	GST liability of Supplier of Service	NIL
4	GST liability of Service Recipient	100 %

9.Supply of services by an author, music composer, photographer, artist. or the like

S. No	Particulars	Particulars
1	Supplier of Service	A recovery agent
2	Nature of service	by way of transfer or permitting the use or enjoyment of a copyright covered under section 13(1)(a) of the Copyright Act, 1957 relating to original literary dramatic, music, literary artistic work
3	Service Recipient	Publisher, music company, producer or the like, located in the taxable territory.
4	GST liability of Supplier of Service	NIL

5	GST liability of Service Recipient	100 %
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10.Services of Person located in nontaxable territory		
S. No	Particulars	Particulars
1	Supplier of Service	Any person located in a non-taxable territory
2	Nature of service	Any service supplied by any person who is located in a non-taxable territory to any person other than non-taxable online recipient
3	Service Recipient	Any person located in the taxable territory other than non-taxable online recipient.
4	GST liability of Supplier of Service	NIL
5	GST liability of Service Recipient	100 %

Non-taxable online recipient means:

As per Section 2(16) of the Integrated Goods and Services Tax (IGST) Act, 2017,

- any Government,
- local authority,
- governmental authority,
- an individual or
- any other person not registered

and receiving online information and database access or retrieval services in relation to any purpose other than commerce, industry or any other business or profession, located in taxable territory.

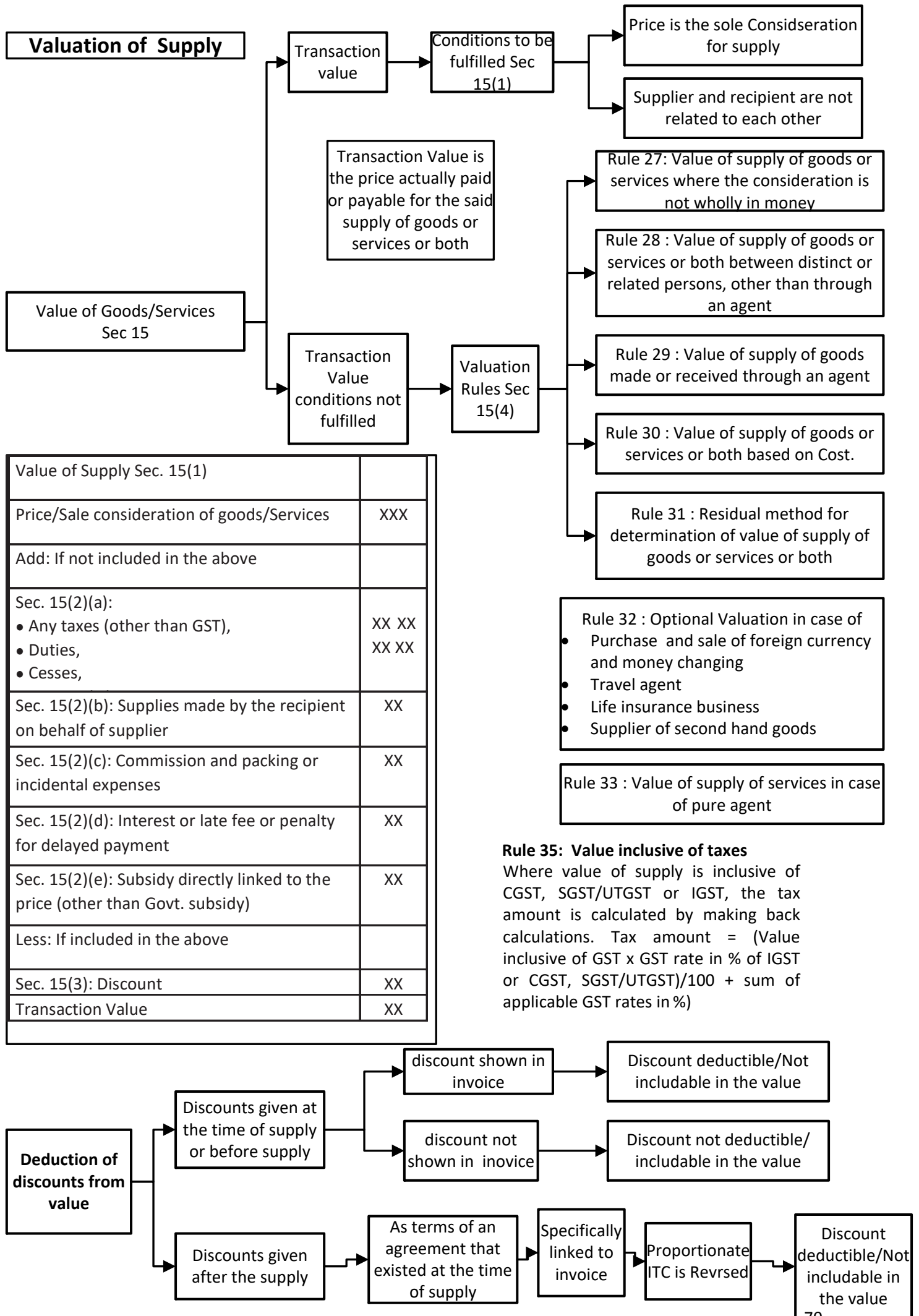
11. Services supplied by a person located in non- taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India		
S. No	Particulars	Particulars
1	Supplier of Service	A person located in nontaxable territory
2	Nature of service	transportation of goods by a vessel from a place outside India up to the customs station of clearance in India
3	Service Recipient	Importer
4	GST liability of Supplier of Service	NIL
5	GST liability of Service Recipient	100 %

12. Services by way of transportation of passengers by a radio-taxi, motorcab, maxicab		
S. No	Particulars	Particulars
1	Supplier of Service	Driver of Cab
2	Nature of service	Transport of Passengers

3	Service Recipient	E Commerce Operator
4	GST liability of Supplier of Service	NIL
5	GST liability of Service Recipient	100 %

13. Services of providing accommodation in hotels, inns, guest houses, clubs, campsites or other commercial places through electronic commerce operator		
S. No	Particulars	Particulars
1	Supplier of Service	Unregistered person Supplying services through Electronic Commerce Operator
2	Nature of service	Transport of Passengers
3	Service Recipient	E Commerce Operator
4	GST liability of Supplier of Service	NIL
5	GST liability of Service Recipient	100 %

14 Services of Overseeing Committee members to RBI <i>Notification No. 33 & 34/2017 IT (R) dated 13.10.2017</i>		
S. No	Particulars	Particulars
1	Supplier of Service	Overseeing Committee members
2	Nature of service	Services to RBI
3	Service Recipient	RBI
4	GST liability of Supplier of Service	NIL
5	GST liability of Service Recipient	100 %



Determination of value in respect of certain supplies -Rule 32

This rates are optional. The supplier can also value under normal valuation rules

Special provision relating to determination of value of service of purchase or sale of foreign currency including money changing [Sub-rule (2)]

Method-1 Rule 32(2)(a)

Case 1: Transaction where one of the currencies exchanged is Indian Rupees

- ❖ The value of supply is difference between buying rate or selling rate of currency and RBI reference rate for that currency at the time of exchange multiplied by total units of foreign currency
- ❖ However, if RBI reference rate for a currency is not available then value of supply is **1%** of the gross amount of Indian Rupees provided/ received by the person changing the money

Example

Mr.Amit sha converted USD \$ 100 into Rs. 7600 @ Rs. 76 per USD through Western Money Changers. RBI reference rate 20th October for US \$ is Rs.74 per US \$. The value of supply in this case is $(Rs. 74 - Rs. 76) \times \$ 100 = Rs. 200$ and GST will be levied on this amount. If the RBI reference rate is not available, then 1% of Rs. 7,600 i.e., Rs. 76 will be the value of supply of service.

Case 2: Transaction where neither of the currencies exchanged is Indian Rupees

The value of supply is 1% of the lesser of the two amounts the person changing the money would have received by converting (at RBI reference rate) any of the two currencies in Indian Rupees.

Example

US \$ 9,000 are converted into UK £ 4,500. RBI reference rate at that time for US \$ is Rs. 74 per US dollar and for UK £ is Rs. 90 per UK Pound. In this case, neither of the currencies exchanged is Indian Rupee.

Hence, in the given case, value of taxable service would be 1% of the lower of the following: -

(a)US dollar converted into Indian rupees = $\$ 9,000 \times Rs. 74 = Rs. 6,66,000$

(b)UK pound converted into Indian rupees = $\text{£ } 4,500 \times Rs. 90 = Rs. 4,05,000$

Value = 1% of Lesser amount = $4,05,000 \times 1\% = Rs. 4050$

Method-2 Rule 32(2)(b)

The person supplying the service may also exercise the following option (based on slab rates) to ascertain the value of service, however, once opted he cannot withdraw it during the remaining part of the financial year:

S.N	Currency exchanged	Value of supply
1.	Upto Rs. 1,00,000	1% of the gross amount of currency exchanged OR Rs. 250 whichever is higher
2.	Exceeding Rs. 1,00,000 and up to Rs. 10,00,000	$Rs. 1,000 + 0.50\%$ of the (gross amount of currency exchanged - Rs. 1,00,000)
3.	Exceeding Rs. 10,00,000	$Rs. 5,500 + 0.1\%$ of the (gross amount of currency exchanged - Rs. 10,00,000) OR Rs. 60,000 whichever is lower

Example

Mr. X, a money changer, has exchanged US \$ 10,000 to Indian rupees @ Rs. 74 per US \$. Mr. X wants to value the supply in accordance with rule 32(2)(b) of CGST Rules. Determine the value of supply made by Mr. X.

Value of supply, made by Mr. X, under rule 32(2)(b) of CGST Rules is computed as under as per slab basis

Particulars	Rs.	Rs.
Value of currency exchanged in Indian rupees [Rs.74 x US \$ 10,000]	7,40,000	
Up to First Rs. 1,00,000	1,000	
For the next Rs.6,40,000 [0.50% x Rs.6,40,000]	<u>3,400</u>	
Value of supply		4,400

Special provision relating to determination of value of service of booking of tickets for air travel by an air travel agent [Rule 32 (3)]

Rule	Service	Value
32(3)	Air travel agent's service (Domestic Bookings)	0.5% of the basic Fare
	Air travel agent's service (International Bookings)	10 % of the basic Fare

Note: Other charges like commission, taxes shall be ignored in calculating the value

Special provision relating to determination of value of service in relation to life insurance business Rule 32(4)

Value of life insurance service varies with nature of insurance policy. The details are as follows:

SN	Nature of the Policy	Taxable value
1	Policy with dual benefits of risk coverage and investment	<u>Gross premium charged less amount allocated for investments/savings if such allocation is intimated to the policy holder at the time of collection of premium</u>
2	Single premium annuity policy	10% of the single premium charged from the policy holder where allocation for investments/ <u>savings is not intimated to the policy holder</u>
3	Other cases	25% of premium charged from the policy holder in the first year and 12.5% of premium charged for subsequent years
4	Policy <u>with ONLY risk cover</u>	<u>Entire premium</u> charged from the policy holder

Special provision relating to determination of value of second hand goods – Margin Scheme [Rule 32(5)]

SN	Particulars	Value
1	When ITC is not availed [Margin Scheme]	Value = Selling price - Purchase price Selling price < Purchase price : Ignore negative value
2	When ITC is availed	Normal valuation as per Valuation Rules

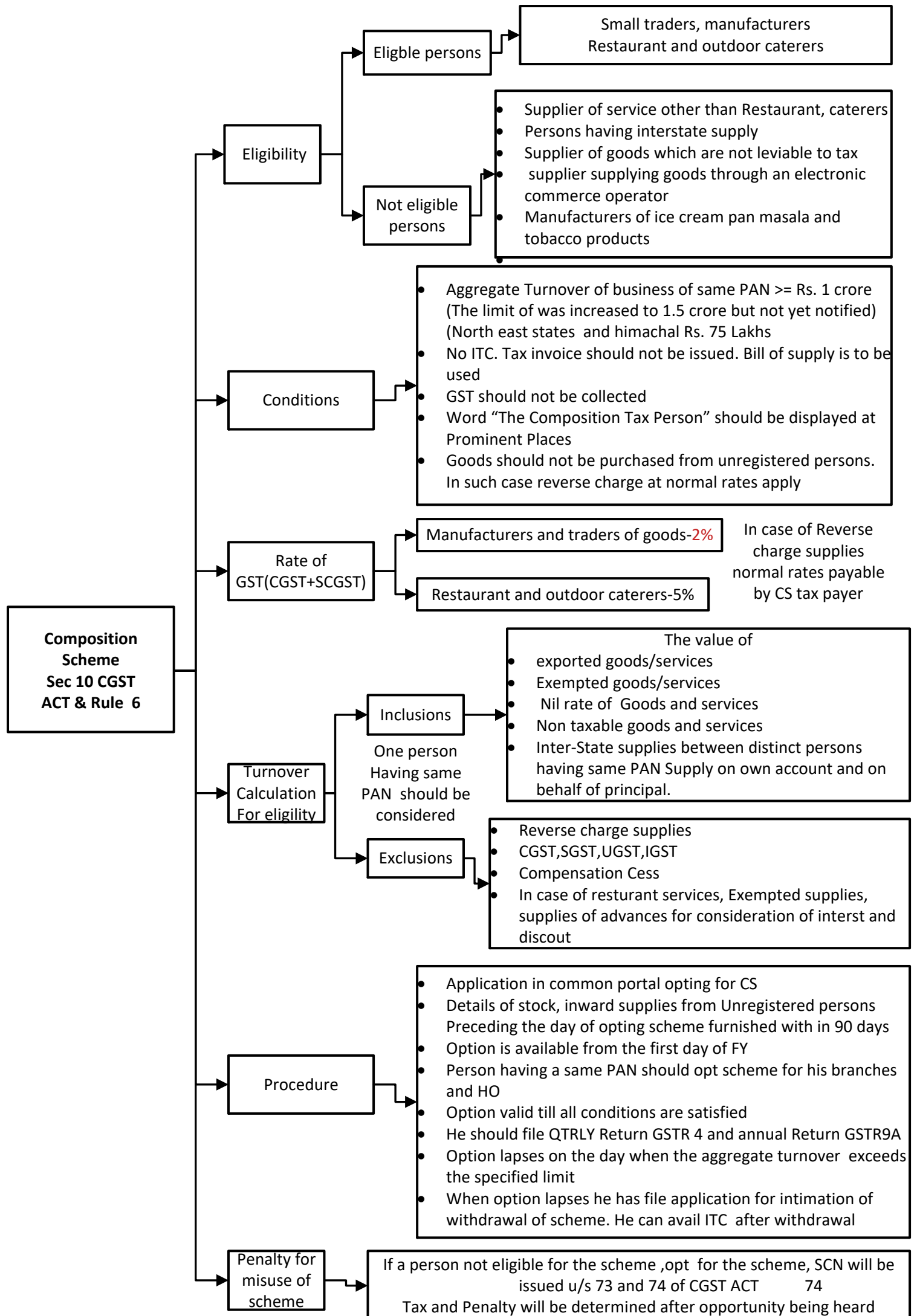
Note:

- ❖ Intra-State supplies of second hand goods by an unregistered supplier to registered second hand goods dealer exempt from CGST
- ❖ CGST on second hand goods received from unregistered supplier exempt

New rule 31A introduced in CGST Rules to provide for valuation of supply of lottery Notification No. 3/2018 CT dated 23.01.2018]

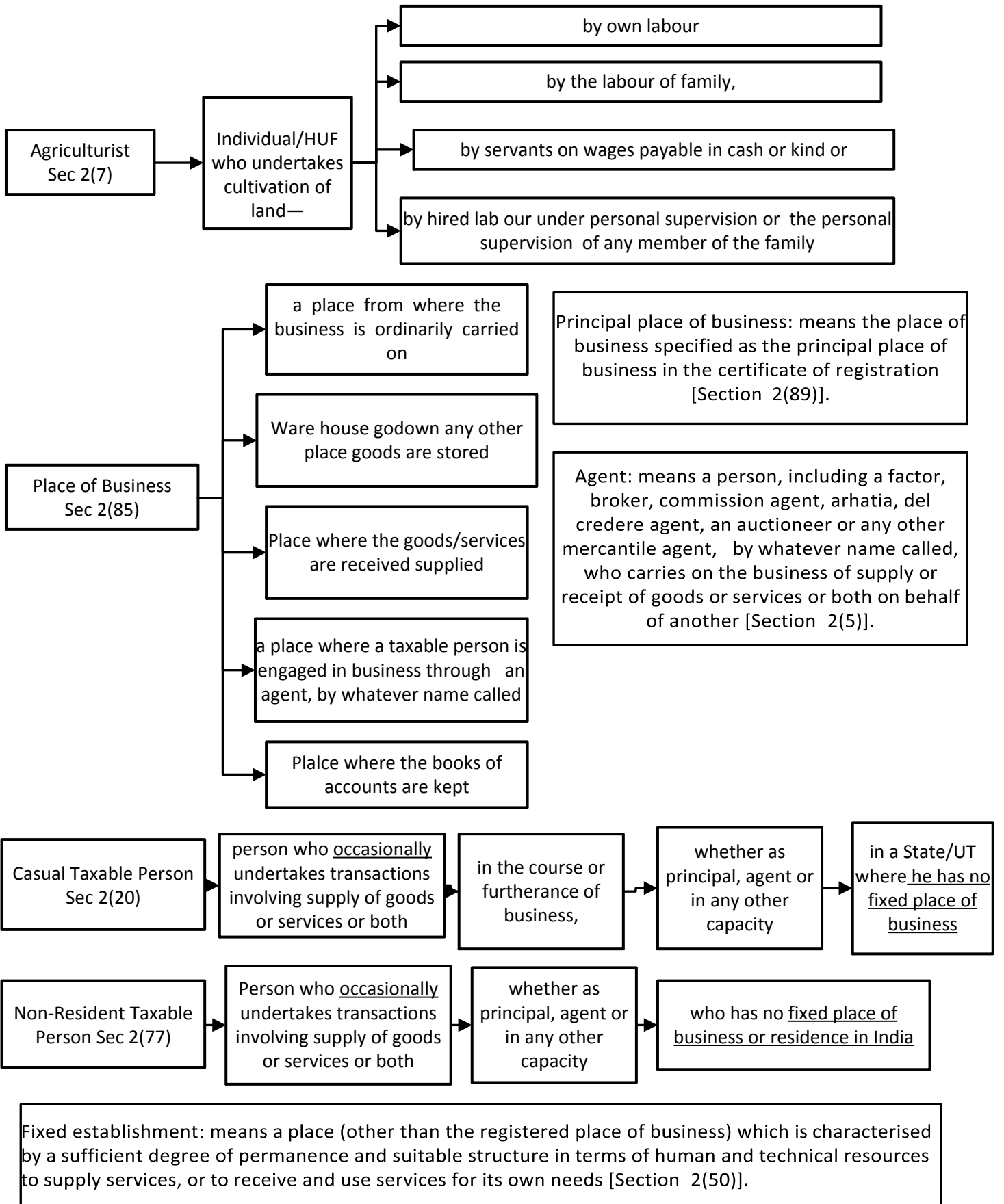
Supply	Value
Supply of lottery run by State Governments	<u>Higher of the two amounts to be deemed as the value</u> 100/112 of the face value of ticket OR 100/112 of the price as notified in the Official Gazette by the organizing State
Supply of lottery authorised by State Governments	<u>Higher of the two amounts to be deemed as the value</u> 100/128 of the face value of ticket OR 100/128 of the price as notified in the Official Gazette by the organising State
Supply of actionable claim in the form of chance to win in betting, gambling or horse racing in a race club	100% of the face value of the bet or the amount paid into the totalisator

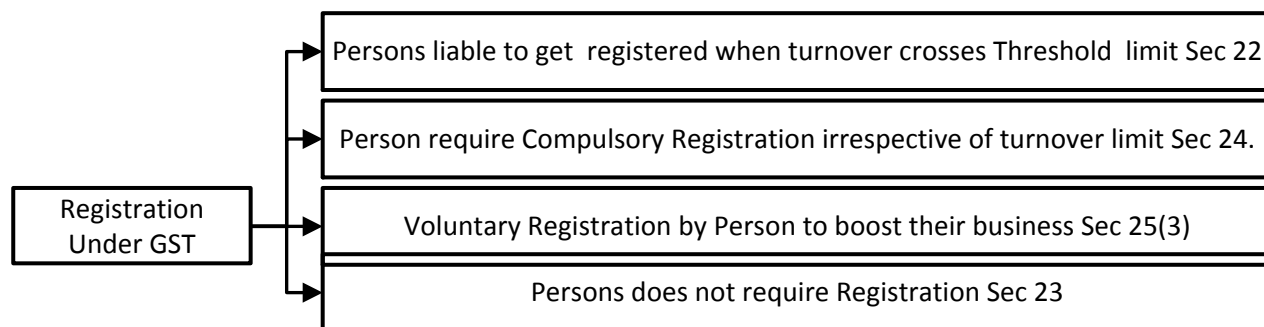
- ❖ “lottery run by State Governments” means a lottery not allowed to be sold in any State
 - other than the organizing State;
- ❖ “lottery authorised by State Governments” means a lottery which is authorised to be
 - sold in State(s) other than the organising State also; and
- ❖ “Organising State” has the same meaning as assigned to it in clause (f) of sub-rule of rule 2 of the Lotteries (Regulation) Rules, 2010.



Registration under GST

Important Definitions





Persons liable to get registered when turnover crosses Threshold limit Sec 22

- Person whose taxable supply of goods or services or both, if his aggregate turnover in a financial year exceeds Rs. 20 lakhs(SCS states 10 lakhs)
- Taxpayers registered under earlier indirect tax laws required to migrate to GST from appointed date
- In case of transfer of business the transferee should get registered from the date of transfer/succession.

Aggregate Turnover All India Basis of same PAN of all Branches					
SN	Inclusions		SN	Exclusions	
1	Taxable supplies	xxxx	1	CGST/SGST/UTGST/IGST	xxxx
	Exempt supplies	xxxx	2	Compensation cess	xxxx
	Outward supplies on which tax is payable under reverse charge	xxxx	3	inward supplies on which tax is payable under reverse charge	xxxx
	Inter-State supplies	xxxx	Aggregate turnover to include all supplies made by the taxable person, whether on his own account or made on behalf of all his principals		
	Inter-State supplies of branch Ho transfers	xxxx			
	Exports	xxxx			
	Total				

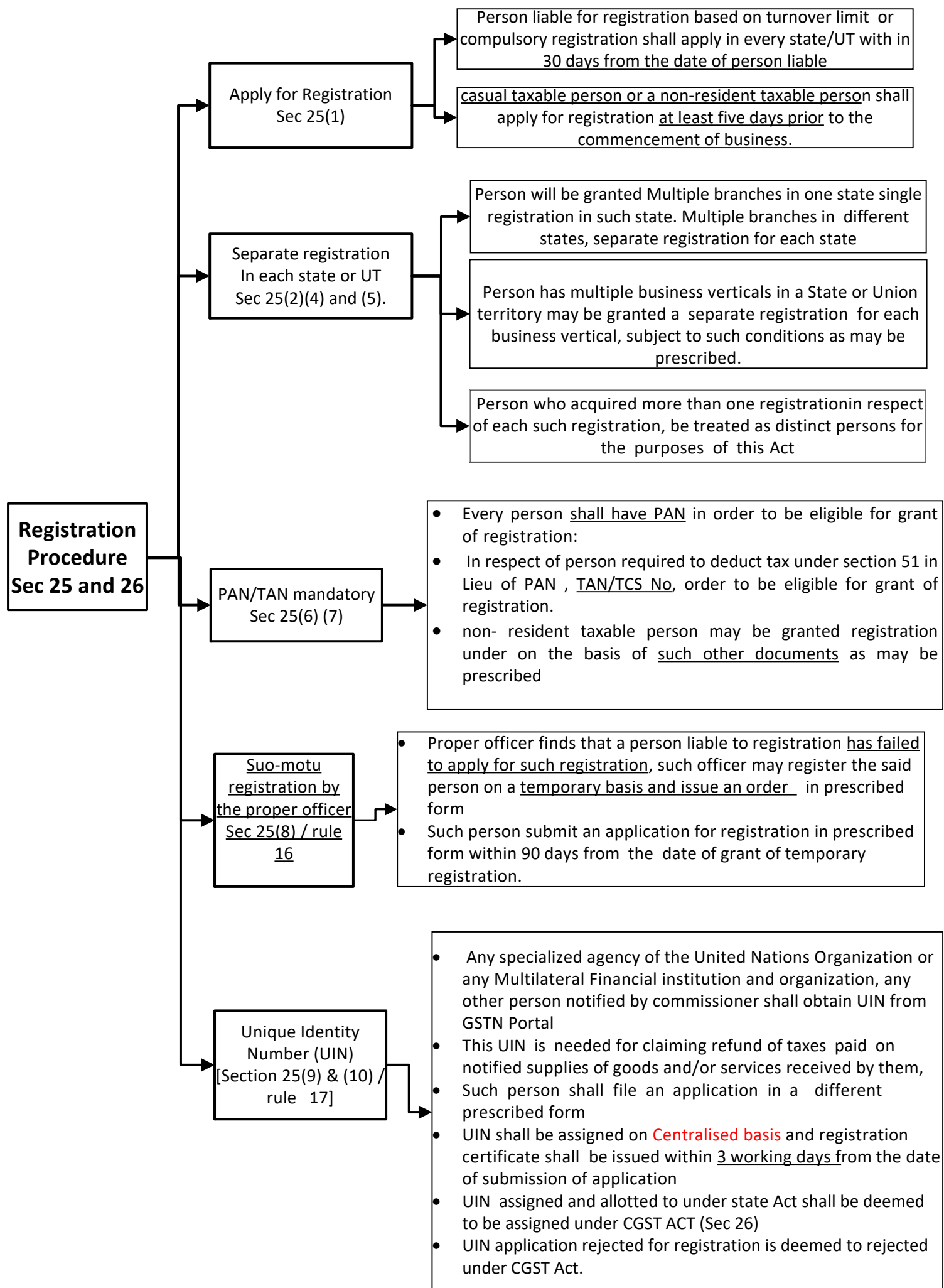
Registration Statutory Provisions

Person require Compulsory Registration irrespective of turnover limit Sec 24

- Persons making any inter-State taxable supply Exceeding Rs. 20 lakh and in case of SCS states Rs. 10 lakhs in FY
- Casual taxable persons/Non resident taxable person making taxable supply
- A person receiving supplies on which tax is payable by recipient on reverse charge basis
- Ecommerce operators who are notified as liable for GST payment under Reverse charge
- Persons who are required to deduct tax under section 51 (TDS)whether or not separately registered under this Act
- Agents who supply taxable supplies on behalf of other taxable person
- Input Service Distributor, whether or not separately registered under this Act
- Every electronic commerce operator;
- Every person supplying online information and data base access or retrieval services from a place outside India to a person in India, other than a registered person;
- Such other person or class of persons as may be notified by the Government on the recommendations of the Council

Voluntary Registration by Person to boost their business Sec 25(3)

- A person who is not liable to be registered under section 22 or section 24 may get himself registered voluntarily
- Voluntary registration is advantageous for the persons which supply of goods / services or to registered persons
- Once he get registered he is liable to pay GST irrespective of his turnover



Procedure for Registration Covered under Rules 8, 9 and 10

Every person seeking registration shall, before applying for registration, declare his PAN mobile number, e-mail address, State/UT in Part A of FORM GST REG- 01 on GST Common Portal.

PAN validated online by Common Portal from CBDT database. Mobile and Email validated through OTP

Temporary Reference Number (TRN) is generated and communicated to the applicant on the validated mobile number and e-mail address

Using TRN, applicant shall electronically submit application in Part B of application form, along with specified documents at the Common Portal

On receipt of such application, an acknowledgement in the prescribed form shall be issued to the applicant electronically

Application shall be forwarded to the Proper Officer

Proper Officer examines the application and accompanying documents

Application and documents found in order

NO

Proper Officer issues notice electronically, within 3 working days from application date asking for clarification

YES

With in 3 working days from the date of the application for registration

The applicant has furnished clarification on the information asked by proper officer with in 7 working days

YES

The proper Officer is satisfied with it

YES

With in 7 working days from the date of the clarification/receipt of documents for registration

Proper officer will grant registration certificate in Form GST REG-06

NO

NO

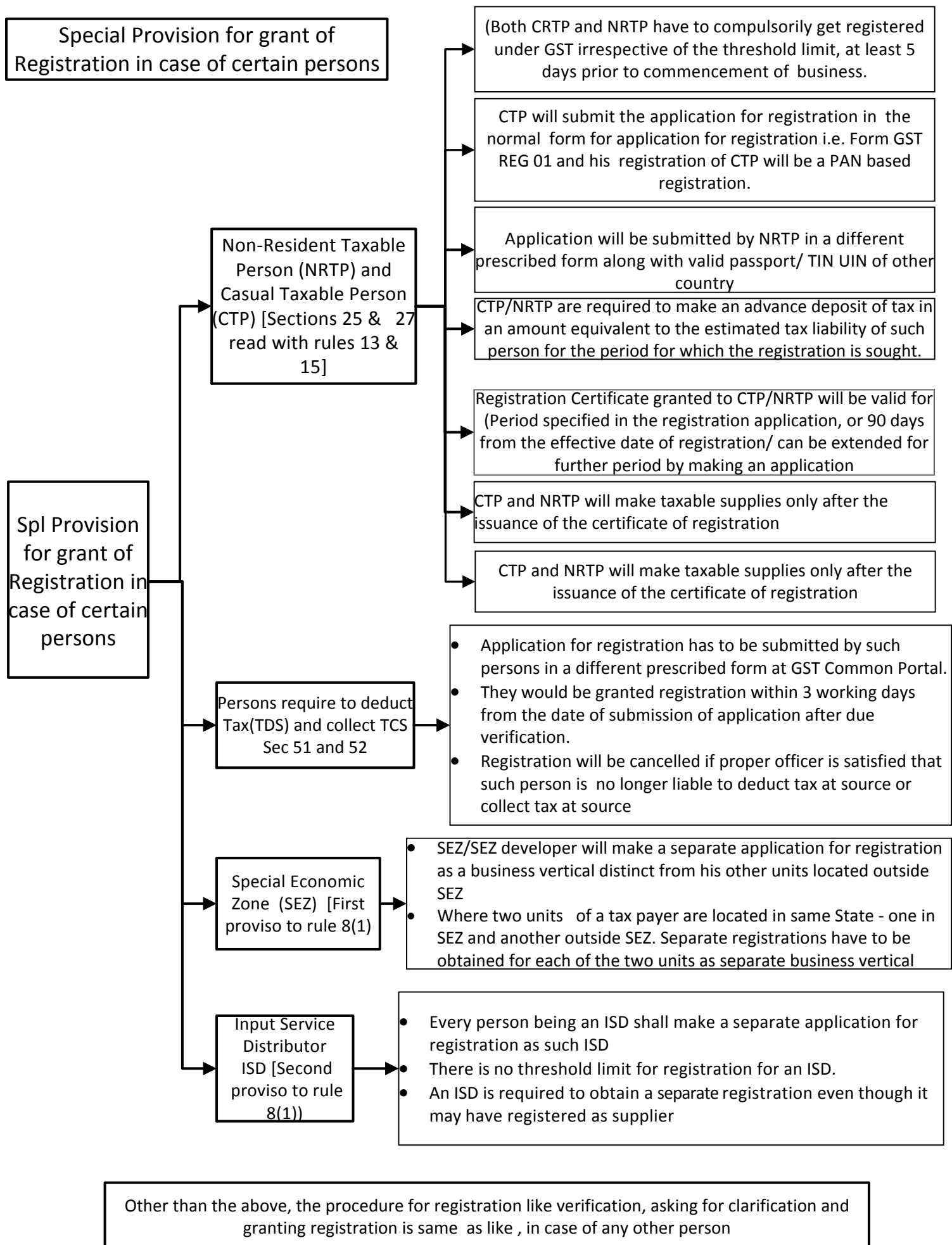
Proper officer will reject the application for reasons to be recorded in writing

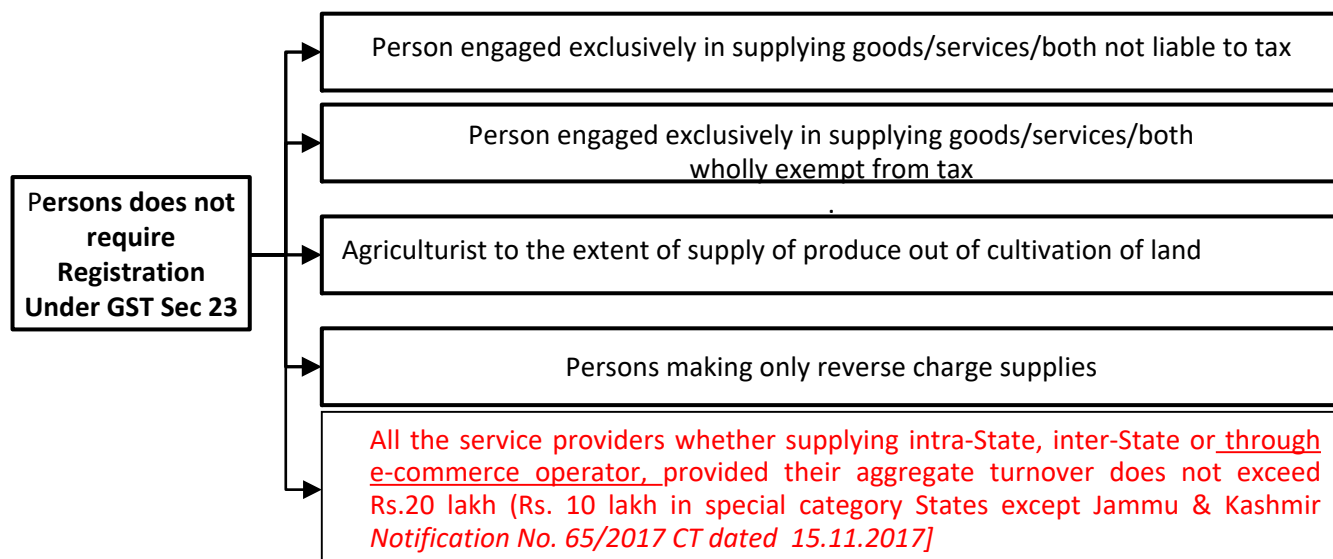
Deemed Approval of Application

If the proper officer fails to take any action -

① within **3 working days** from the date of submission of application, or

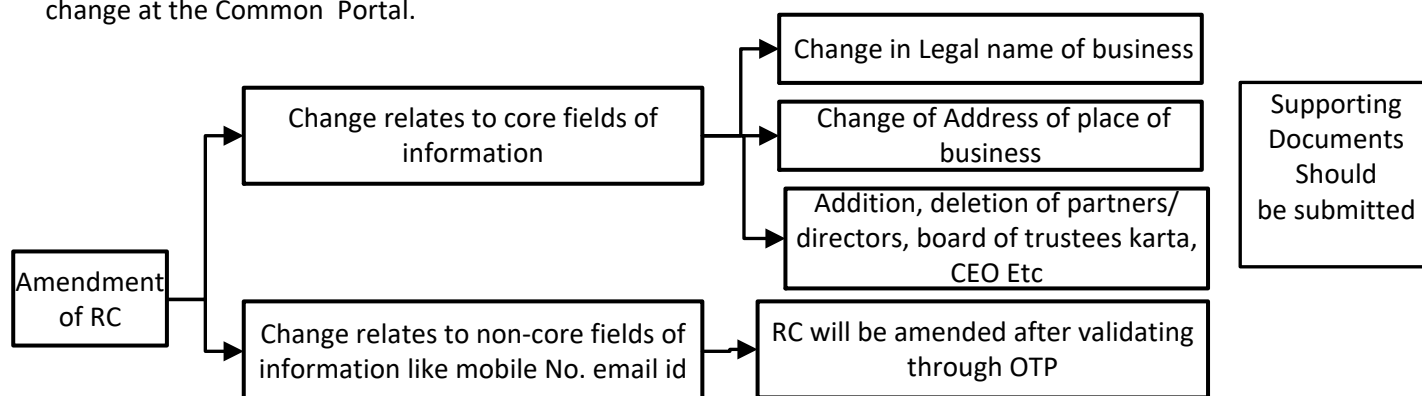
② within **7 working days** from the date of receipt of clarification, information or documents furnished by the applicant, the application for grant of registration shall be deemed to have been approved.





Amendment of registration Sec 28 and Rule 19

If is any change in the particulars furnished in registration application/UIN application, registered person shall submit an application in prescribed manner, within 15 days of such change, along with documents relating to such change at the Common Portal.



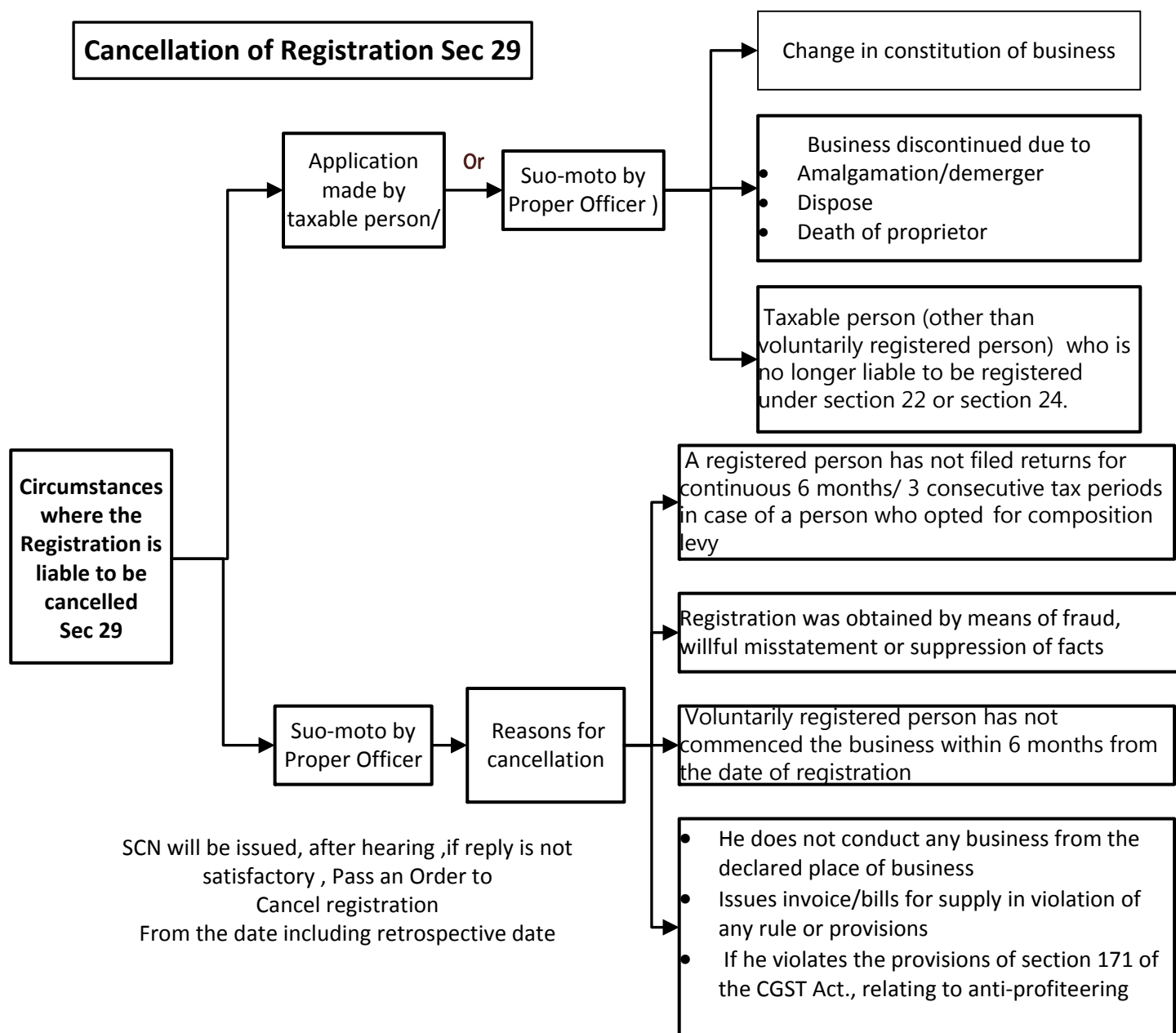
- If the documents and particulars are correct, the RC will be amended within 15 working days
- If PO is of the opinion that amendment is unwarranted or documents furnished are incomplete/ incorrect, PO will serve a SCN why application for amendment should not be rejected
- Registered person should reply to the notice within 7 working days.
- If the reply is satisfied RC will be amended. If not satisfied application for amendment will be rejected

If the proper officer fails to take any action,-

- within a period of fifteen working days from the date of submission of the application, or
 - within a period of seven working days from the date of the receipt of the reply to the show cause notice,
- the certificate of registration shall stand amended to the extent applied for and the amended certificate shall be made available to the registered person on the common portal.

Amendment of RC effective earlier than date of submission of application:

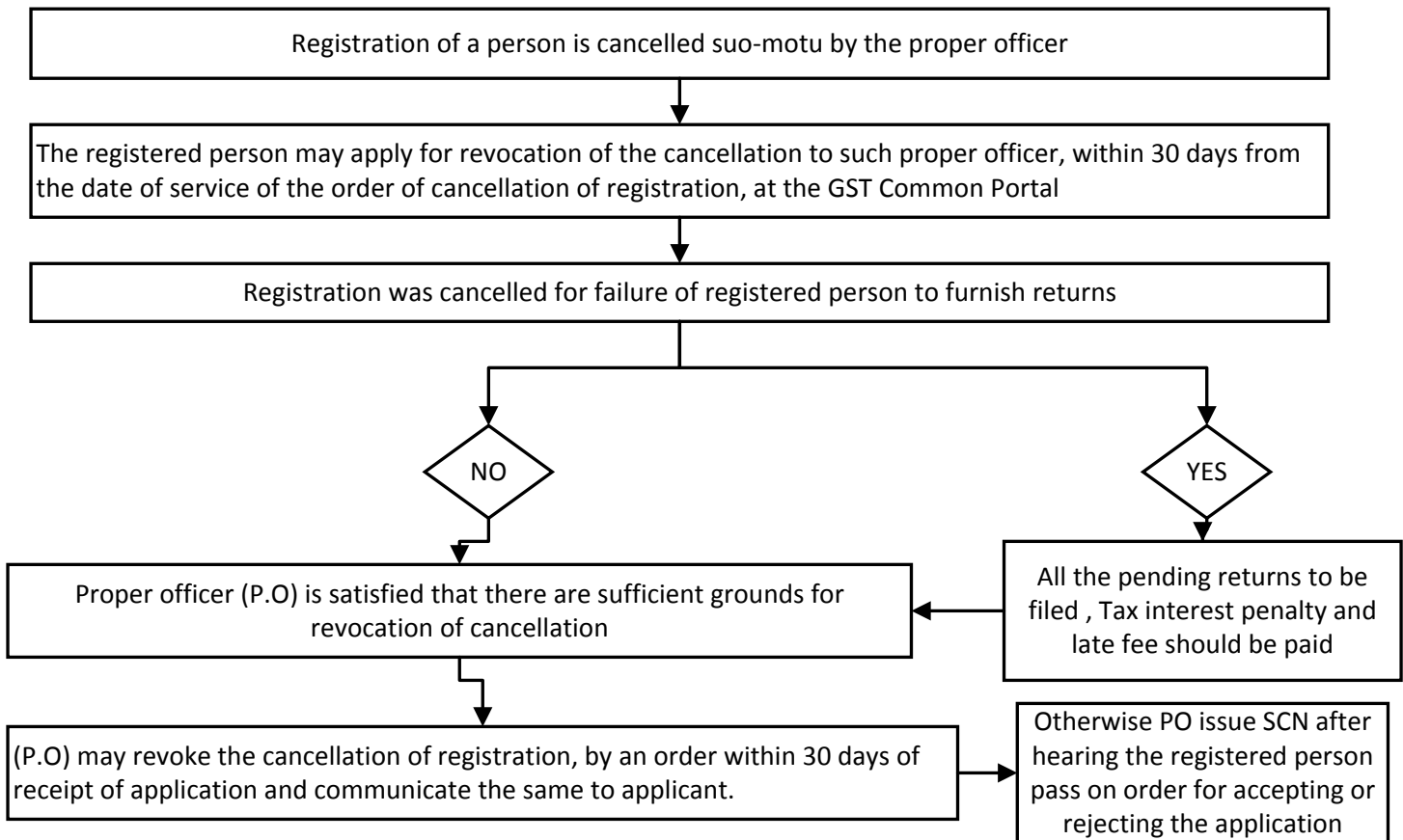
- Amendment order of RC from the date earlier than the date of submission of application is made only with the order of the Commissioner for reasons to be recorded in writing and subject to such conditions as the Commissioner may, in the said order, specify. **Notification No. 75/2017 CT dated 29.12.2017**

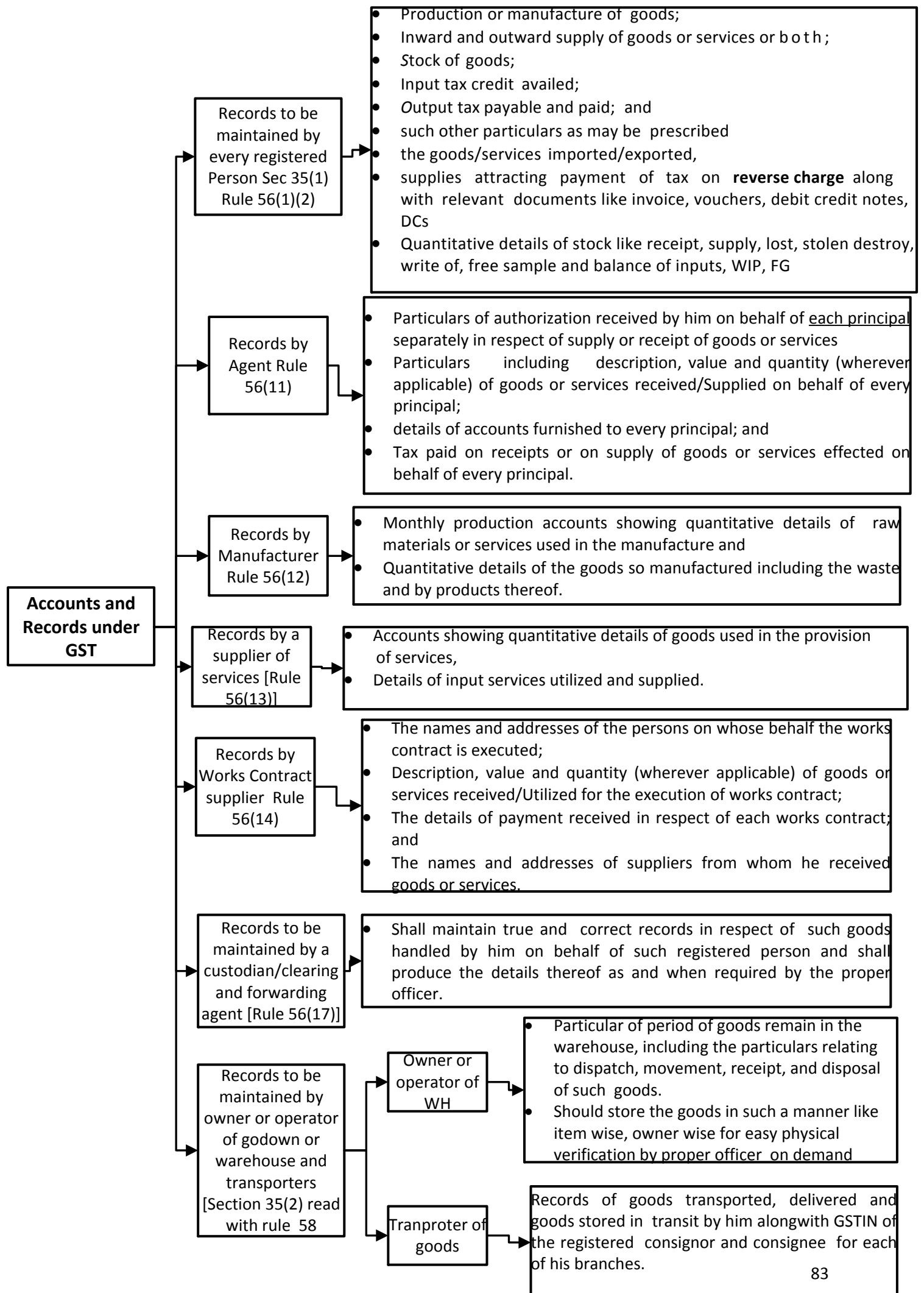


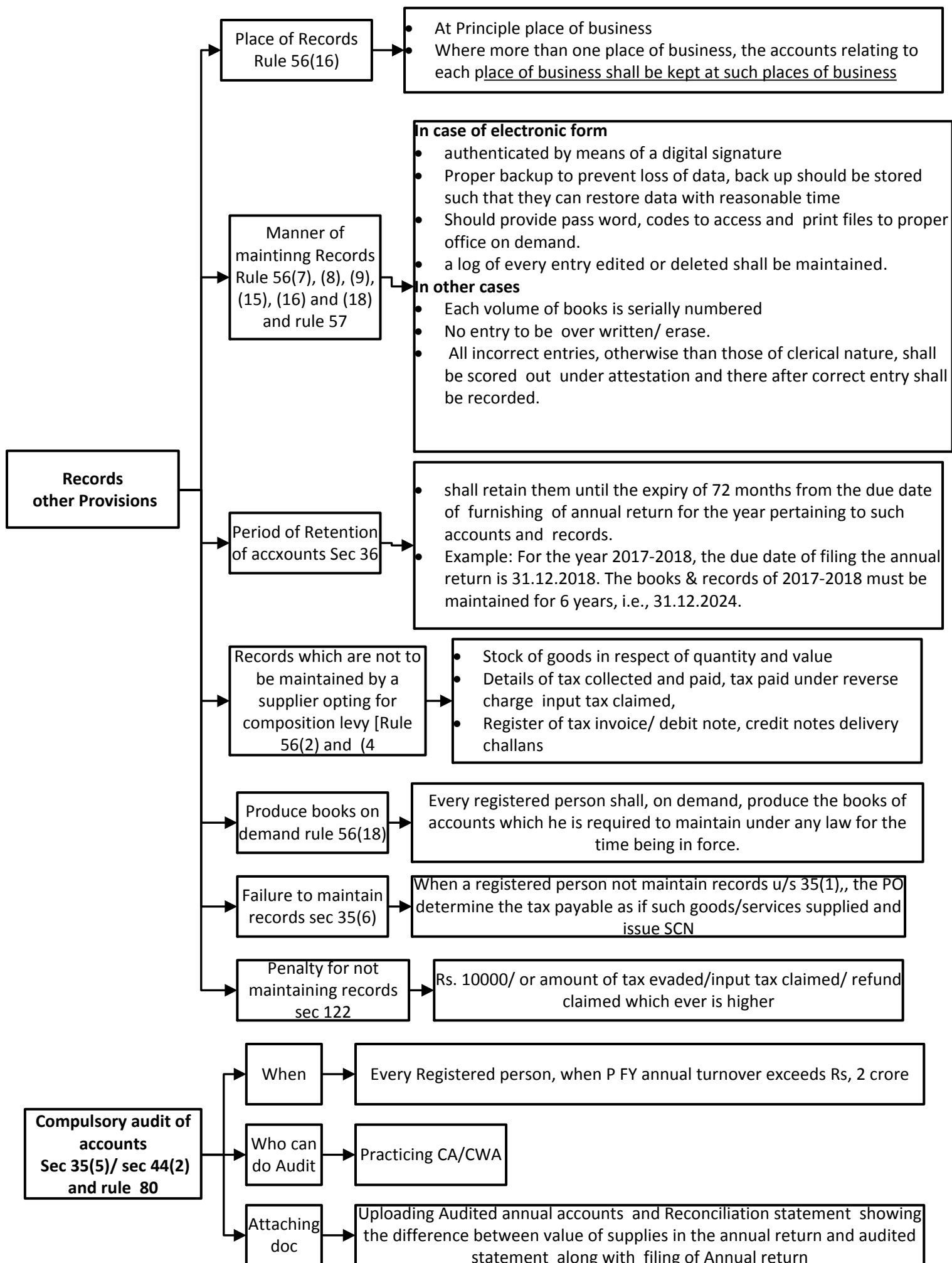
Procedure for Cancellation of Registration

- Application for Cancellation through common portal with in 30 days of occurrence of event
- Details of stock of inputs, WIP, FG and Capital goods along with details of tax liability on the date of application should be furnished
- A registered person whose registration is cancelled will have to debit the electronic credit or cash ledger by an amount equal to credit availed on inputs, WIP, finished goods, and capital goods or output tax payable whichever is higher
- In respect of capital goods, credit is to be reversed by taking useful of capital goods is 60 months
- Where the proper officer cancels the registration Suo-moto, SCN is to be issued, if registered person given reply within 7 working days and if is satisfactory, the cancellation proceedings should be dropped
- A voluntarily registered person cannot seek cancellation before the expiry of a period of 1 year from the effective date of registration [Proviso to rule 20]
- A person to whom a UIN has been granted under rule 17 cannot apply for cancellation of registration [Rule 20]
- The cancellation of registration shall be effective from a date to be determined by the proper officer.
- The cancellation of registration under either SGST Act/UTGST Act shall be deemed to be a cancellation of registration under CGST Act [Section 29(4)].
- The proper officer will direct the taxable person to pay arrears of any tax, interest or penalty including the amount liable to be paid under section 29(5)
- The registered person continues to liable for taxes due period prior to the date of cancellation

Revocation of Cancellation of license sec 30, Rule 23







RETURNS UNDER GST

- The term “return” ordinarily means statement of information (facts) furnished by the taxpayer, tax administrators, at regular intervals.
- The information to be furnished in the return generally comprises of the details pertaining to the nature of activities/business operations of taxpayer and Tax information like sale price, turnover, or value; deductions and exemptions; and determination and discharge of tax liability for a given tax period
- The return, therefore, constitutes a kind of working sheet/supporting document for the tax authorities that can be relied upon as the basis on which the tax has been computed by the taxpayer.
- Under GST, a regular taxpayer needs to furnish monthly returns, quarterly returns and annual return. it mandatory to file all returns electronically.
- The taxpayer is generally required to furnish the return in a specific statutory format
- There are separate returns for a taxpayer registered under the composition scheme, non-resident taxpayer, taxpayer, Input Service Distributor, a person liable to deduct or collect the tax (TDS/TCS) and a person granted Unique Identification Number.
- The GST returns can be filed through GSTN portal, or GST Suvidha Providers (GSPs)
- The due date for payment of GST is on or before 20th of the following month

The Various return forms to be filed under GST

Return	Partic	Frequency	Due Date
GSTR-1	Details of outward supplies of taxable goods and/or services effected (Section 37 of the CGST Act, 2017).	Monthly (Quarterly in case of persons having aggregate annual turnover up to Rs.1.5 crore)	10th of the next month
GSTR-2	Details of inward supplies of taxable goods and/ or services effected claiming input tax credit (Section 38 of the CGST Act, 2017).	Monthly	15th of the next month (date of filing is postponed till the further announcement)
GSTR-3	Monthly return on the basis of finalization of details of outward supplies and inward supplies along with the payment of amount of tax (Sec- tion 39(1) of the CGST Act,	Monthly	20th of the next month (date of filing is postponed till the further announcement)
GSTR-3B	Simple return for Jul 2017- Mar 2018	Monthly	20th of the next month
GSTR-4	Return for compounding taxable person (Section 39(2) of the CGST Act, 2017)	Quarterly	18th of the month succeeding quarter
GSTR-5	Return for Non-Resident foreign taxable person (Section 39(5) of the CGST Act, 2017)	Monthly	20th of the next month or within 7 days after the last day of the period of registration specified u/s 27(1), whichever

GSTR-5A	Return for OIDAR Rule 64	Monthly	20th of the next month
GSTR-6	Return for Input Service Distributor (Section 39(4) of the CGST Act, 2017)	Monthly	13th of the next month
GSTR-7	Return for authorities deducting tax at source (Section 39(3) of the CGST Act, 2017)	Monthly	10th of the next month
GSTR-8	Details of supplies effected through e-commerce operator and the amount of tax collected	Monthly	10th of the next month
GSTR-9	Annual Return (section 44 of the CGST Act, 2017) (a) Who Files: Registered Person other than an ISD, TDS/TCS Taxpayer, Casual Taxable Person and Non-resident Taxpayer. (b) In this return, the taxpayer needs to furnish details of expenditure and	Annually	31st December of next financial year
GSTR-10	Final Return (Section 45 of the CGST Act, 2017)	Once. When registration is cancelled or surrendered	Within three months of the date of cancellation or date of cancellation order, whichever is later.
GSTR-11	Details of inward supplies to be furnished by a person having UIN and claiming refund.	Monthly	28th of the month following the month for which statement is filed
To be notified	Information return u/s 123 and 150 by third party like taxable person/bankers, sub registrar/Local authority/Stock exchange/govt.	To be notified	To be notified

The due date of filing of the returns in the table mentioned above) may be extended by the Commissioner/Commissioner of State GST/Commissioner of UTGST for a class of taxable persons by way of a notification

Persons not required to file GSTR 1 GSTR 2, and GSTR 3

- ISD
- NRTP
- Composition taxpayer
- Tax deductor/Collector
- ECO
- Supplier of OIDAR service

GSTR-3 filed without payment of self-assessed tax disclosed therein, is regarded as a invalid return in terms of section 2(117).

Due dates for payment of tax in respect of the persons required to file GSTR- 3, GSTR-4, GSTR-5 and GSTR-7 are linked with the due dates for filing of such returns i.e., the last dates (due dates) of filing such returns are also the due dates for payment of tax in respect of persons required to file such returns.

Rectification of errors/omissions [Section 39(9)]

- ❖ The mechanism of filing revised returns for any correction of errors/omissions has been done away with.
- ❖ Errors due to mismatch of ITC can be rectified in the same tax period on the GSTR 3 Valid return
- ❖ Omission or incorrect particulars discovered in the returns filed u/s 39 can be rectified in the return to be filed for the month/quarter is allowed in the subsequent/future returns in the appropriate particulars in “Amendment Tables” contained Returns.
- ❖ Any tax liability due to omission/rectification should be paid along with interest.
- ❖ Rectification of error or omission discovered on account of scrutiny, audit, inspection or enforcement activities by tax authorities is not allowed in the returns.

Time limit for making rectification other than errors due to scrutiny/audit/ inspection etc.,

- ❖ Actual Date of annual filing of return or due date of filing of September month/quarter ending September of following financial year (20 the October of next Financial year)

Notice to furnish Return sec 46

Where a registered person fails to furnish a return under section 39 (GSTR 3 to GSTR 8) or section 44 (Annual return) or section 45 (final return) a notice shall be issued requiring him to furnish such return within fifteen days in such form and manner as may be prescribed

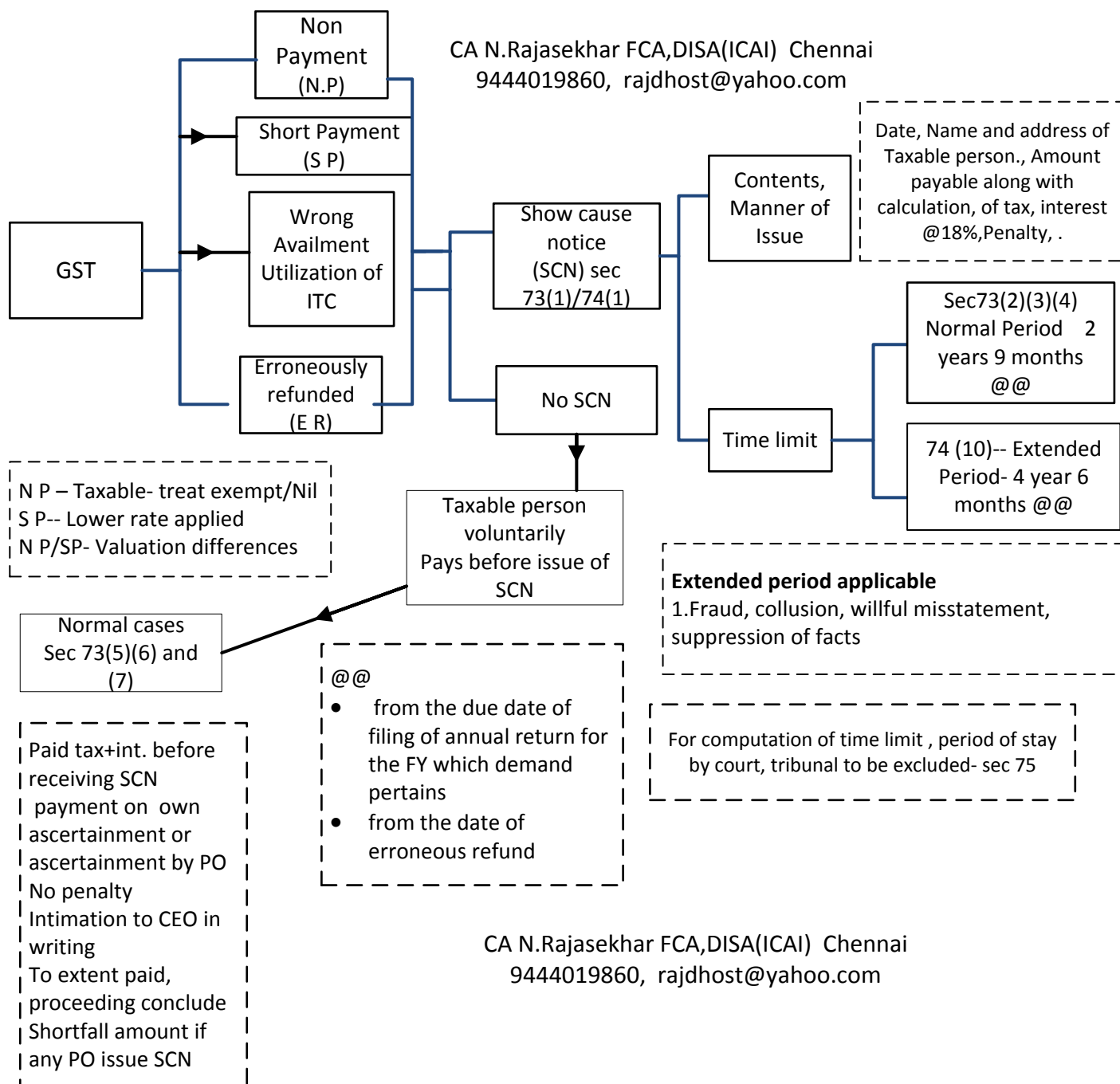
Late fee for filing of returns Sec 47

SN	Type of return	Penalty
1	All returns other than annual return	Rs. 100 per day during such failure continues or Rs. 5000 Whichever is less
2	Annual return	Rs. 100 per day during such failure continues or Rs.0.25% of turnover Whichever is less

Demand and adjudication -1

Demand (Recovery) of GST- Sec 73 and 74 of CGST

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Where a notice has been issued for any period on a person chargeable with tax, if such person commits such default in some other period also, instead of issuing a detailed notice, a mere statement containing the details of tax not paid/short paid/erroneously refunded/ITC wrongly availed/utilised for such periods, can be issued.

(where any amount of self-assessed tax in accordance with a return furnished under section 39 remains unpaid, either wholly or partly, or any amount of interest payable on such tax remains unpaid, the same shall be recovered under the provisions of section 79 (i.e. recovery of tax from various modes). No need to issue SCN Sec 75(12)

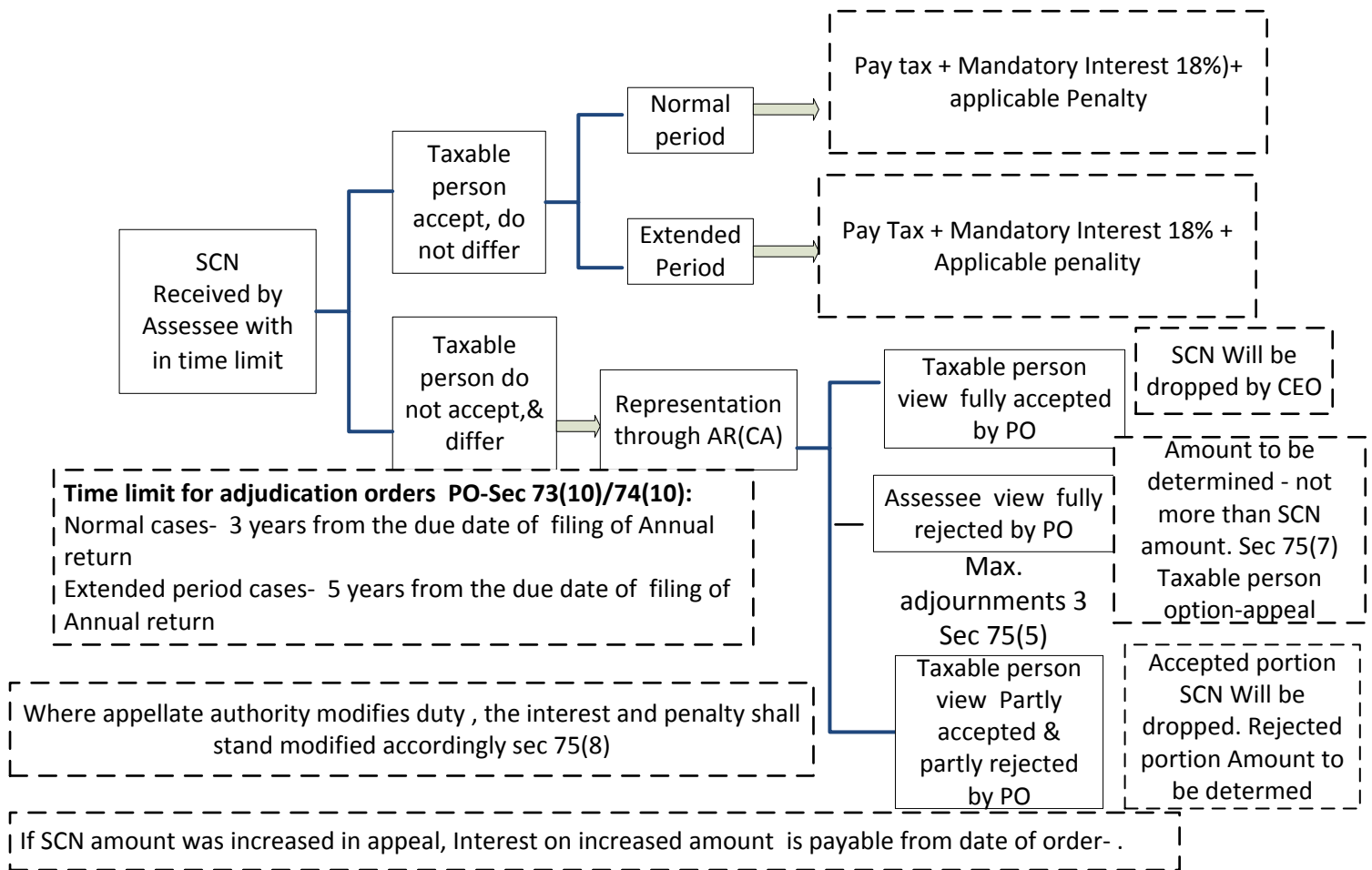
SCN issued after lapse of time limit, it is invalid.

In case of extended period, it is on the part of department to prove fraud, collusion etc., on the part of taxable person

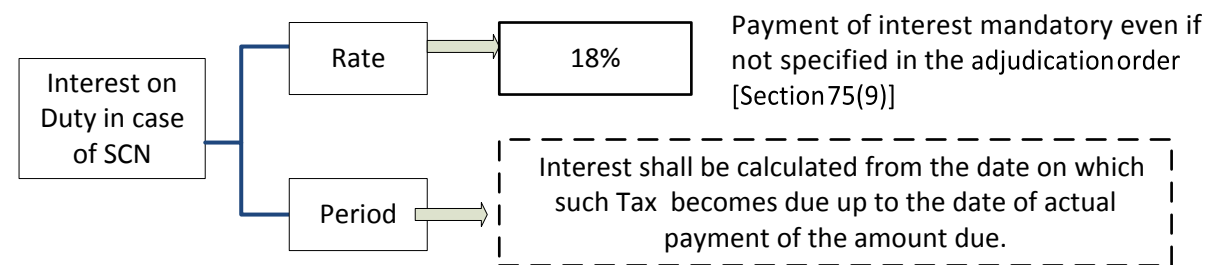
Where the SCN was issued u/s 74(1) for extended period, and if it is not sustainable under tribunal court, it can be deemed as notice issued u/s 73(1) for normal period- sec 75(2)

Demand and adjudication -2

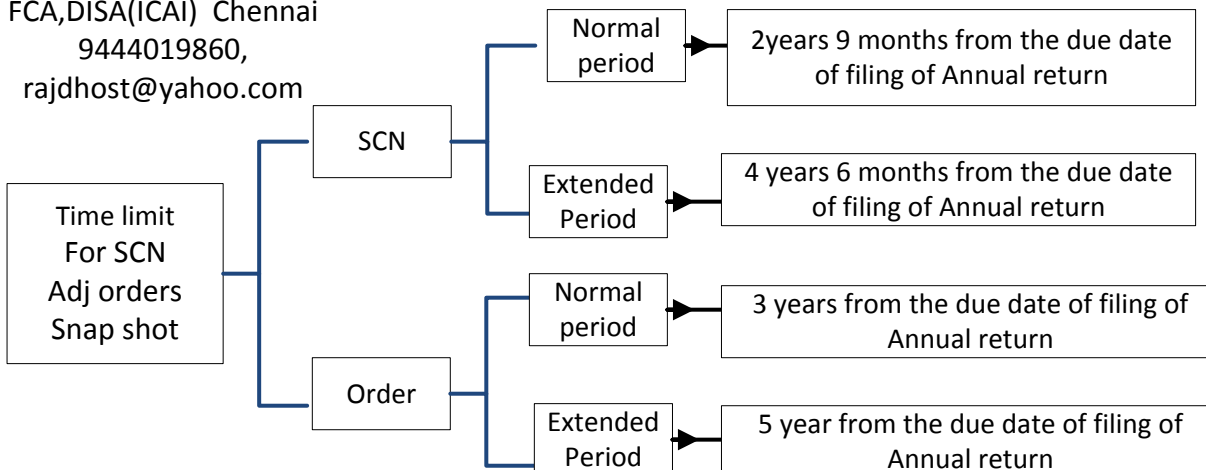
Adjudication orders of PO- Sec 74(9) and(11) of CGST



Mandatory Interest in case of Recovery of Tax

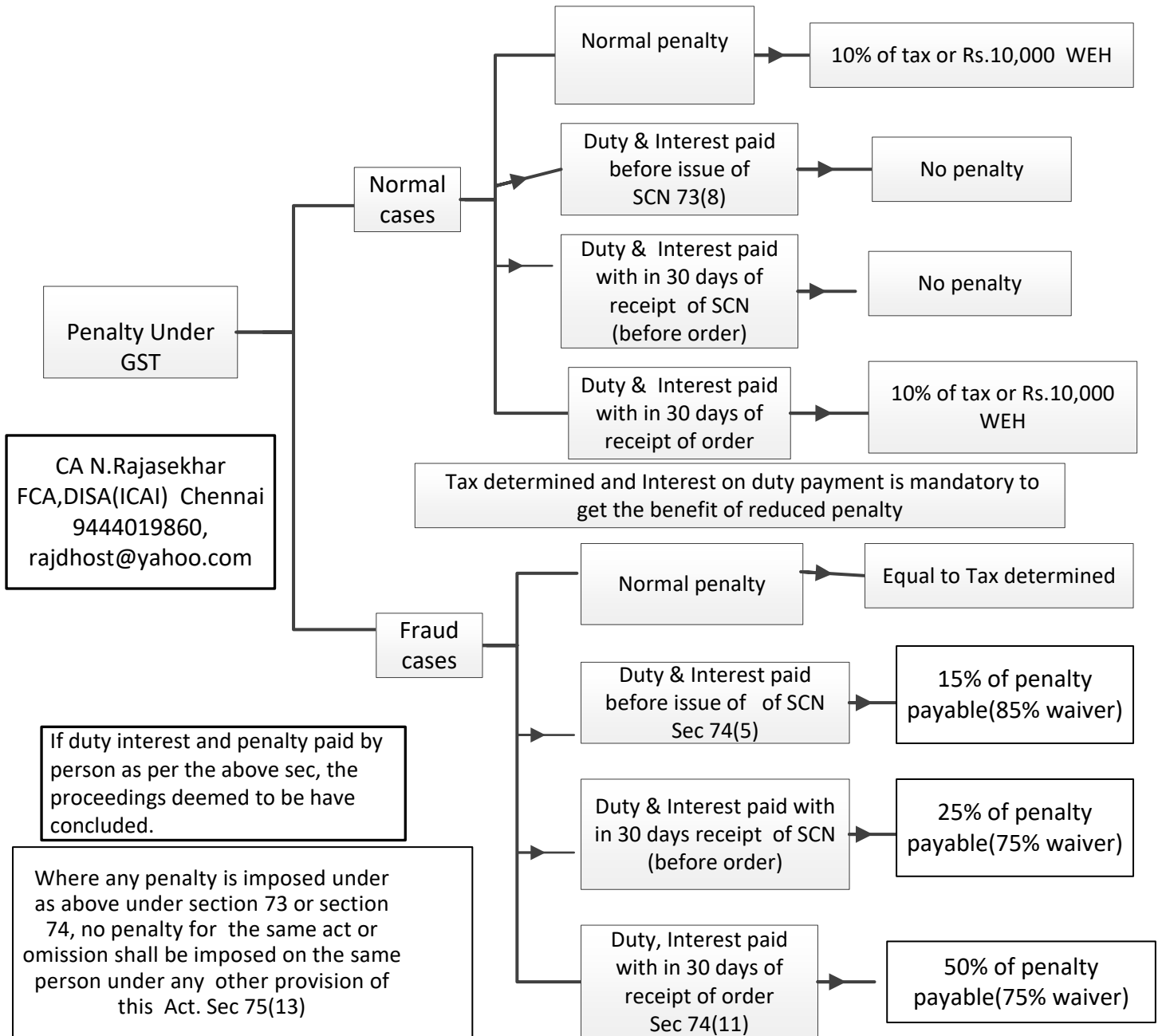


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There are various forms prescribed under GST for issue of SCN, reply by assessee, issue order, intimation by taxable person for tax paid before SCN.

GST Penalty Under sec 73 and 74



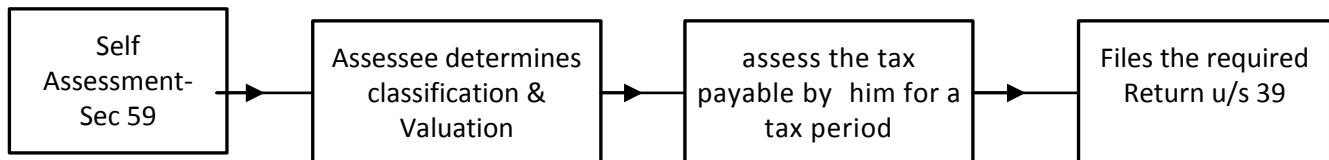
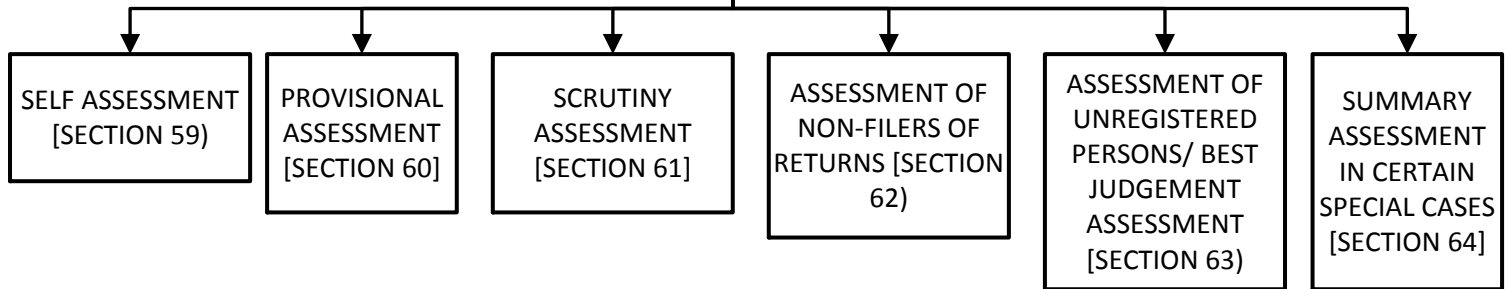
Monetary limits for issuing SCN and orders

	CGST Officer	Monetary Limit for demand of CGST SCN and Order u/s 73/74	Monetary Limit for demand of IGST SCN and Order u/s 20	Monetary Limit for demand of CGST and IGST SCN and Order u/s 73/74 and u/s 20
(1)	(2)	(3)	(4)	(5)
1.	Superintendent of Central Tax	Not exceeding Rupees 10 lakh	Not exceeding Rupees 20 lakh	Not exceeding Rupees 20 lakh
2.	Deputy or Assistant Commissioner of Central Tax	Above Rupees 10 lakh and not exceeding Rupees 1 crore	Above Rupees 20 lakh and not exceeding Rupees 2 crores	Above Rupees 20 lakh and not exceeding Rupees 2 crores
3.	Additional or Joint Commissioner of Central Tax	Above Rupees 1 crore without any limit	Above Rupees 2 crores without any limit	Above Rupees 2 crores without any limit

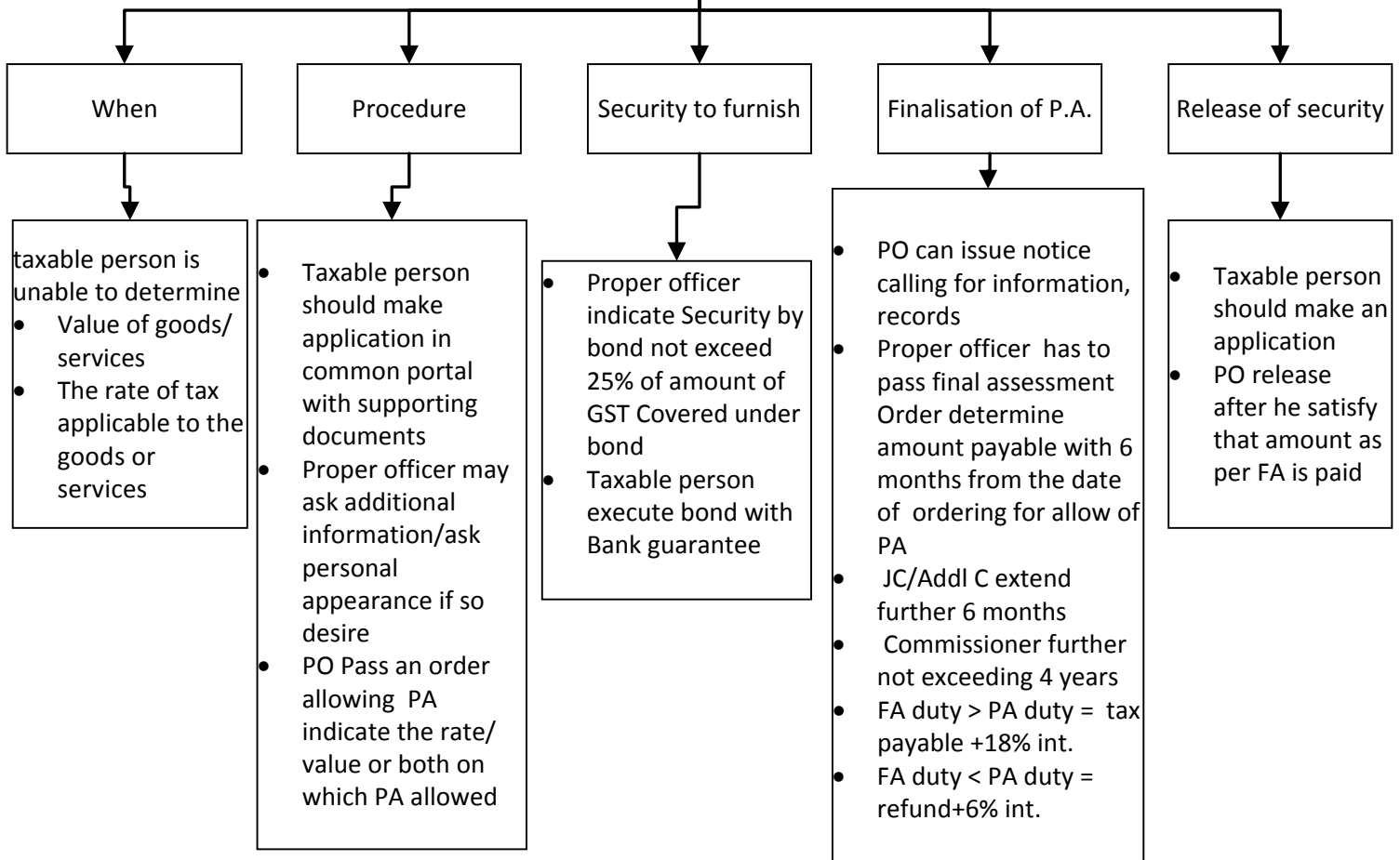
Assessments under GST

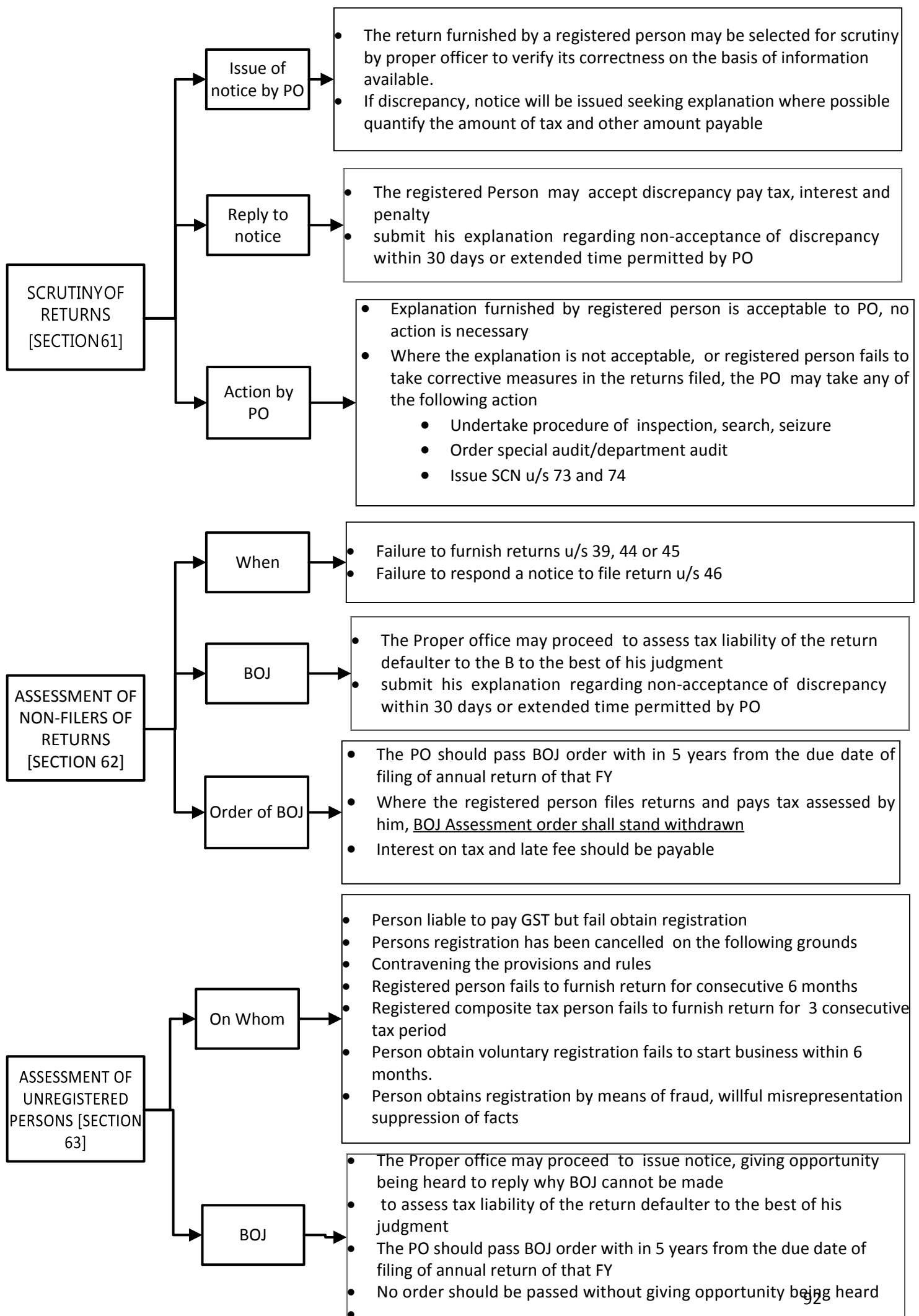
Assessment means determination of tax liability under this Act and includes self-assessment, re-assessment, provisional assessment, summary assessment and best judgment assessment. [Section 2(11)]

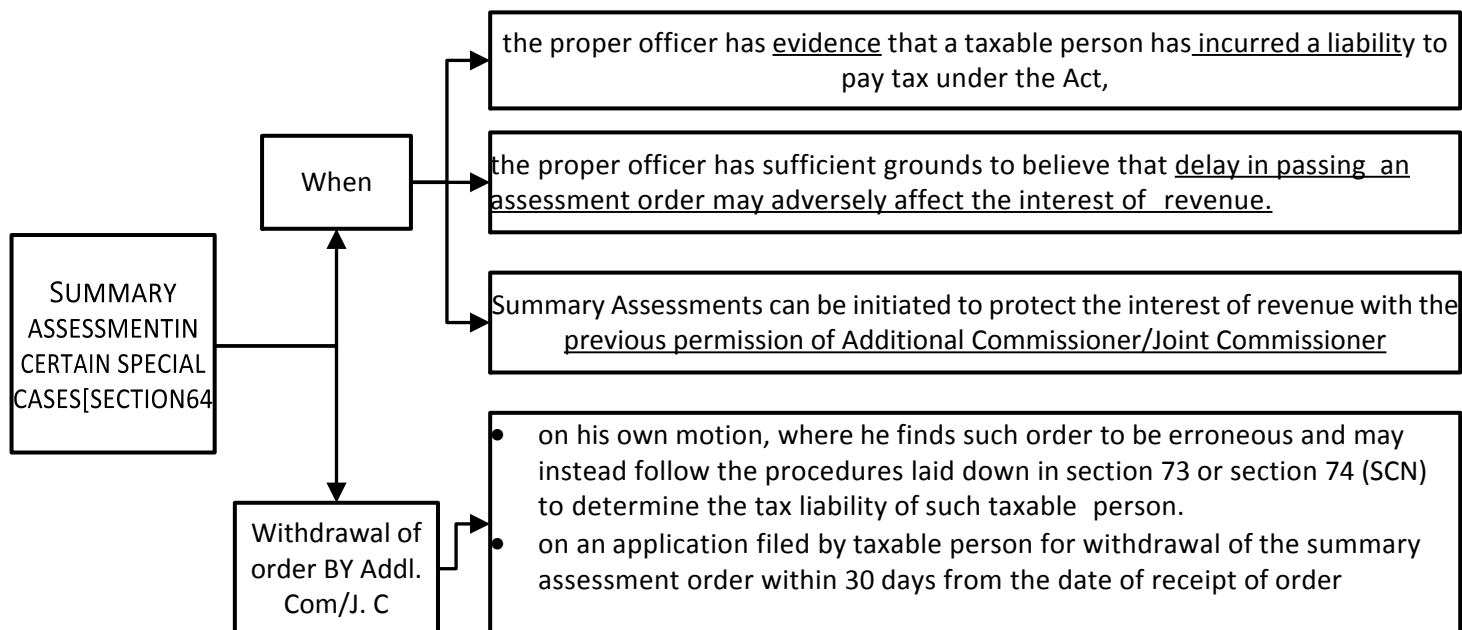
Types of Assessments



Provisional Assessment Sec 60

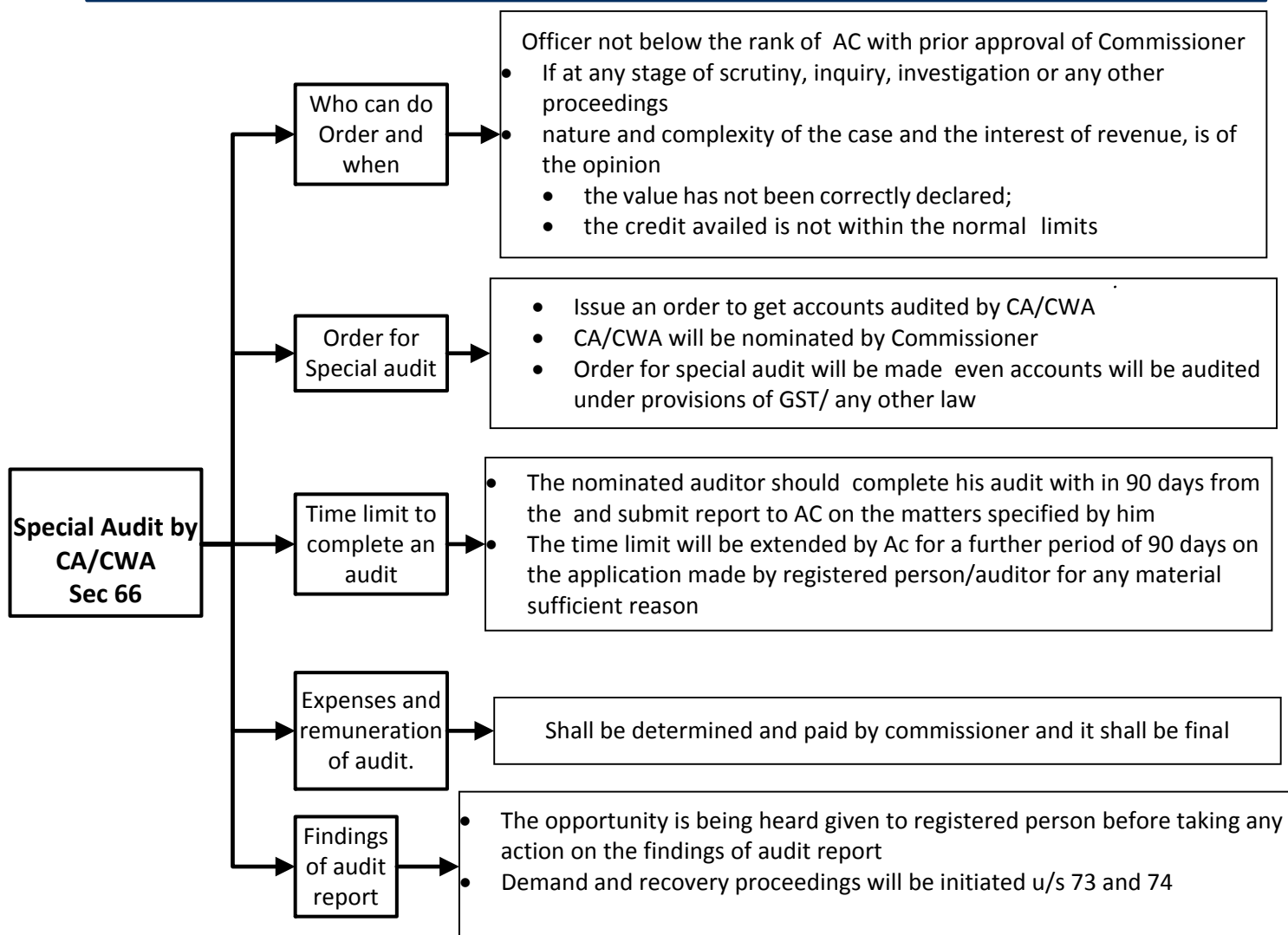


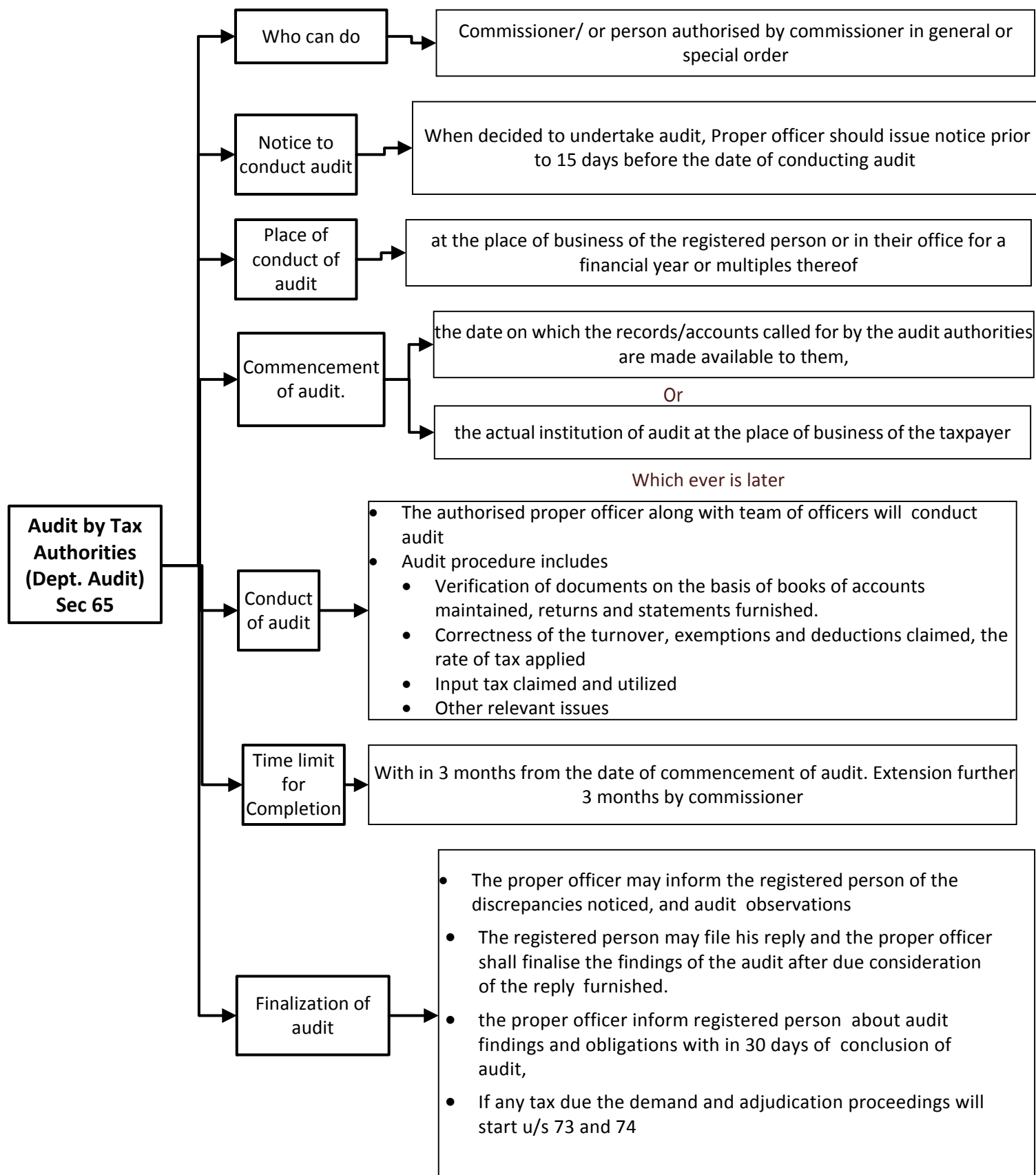




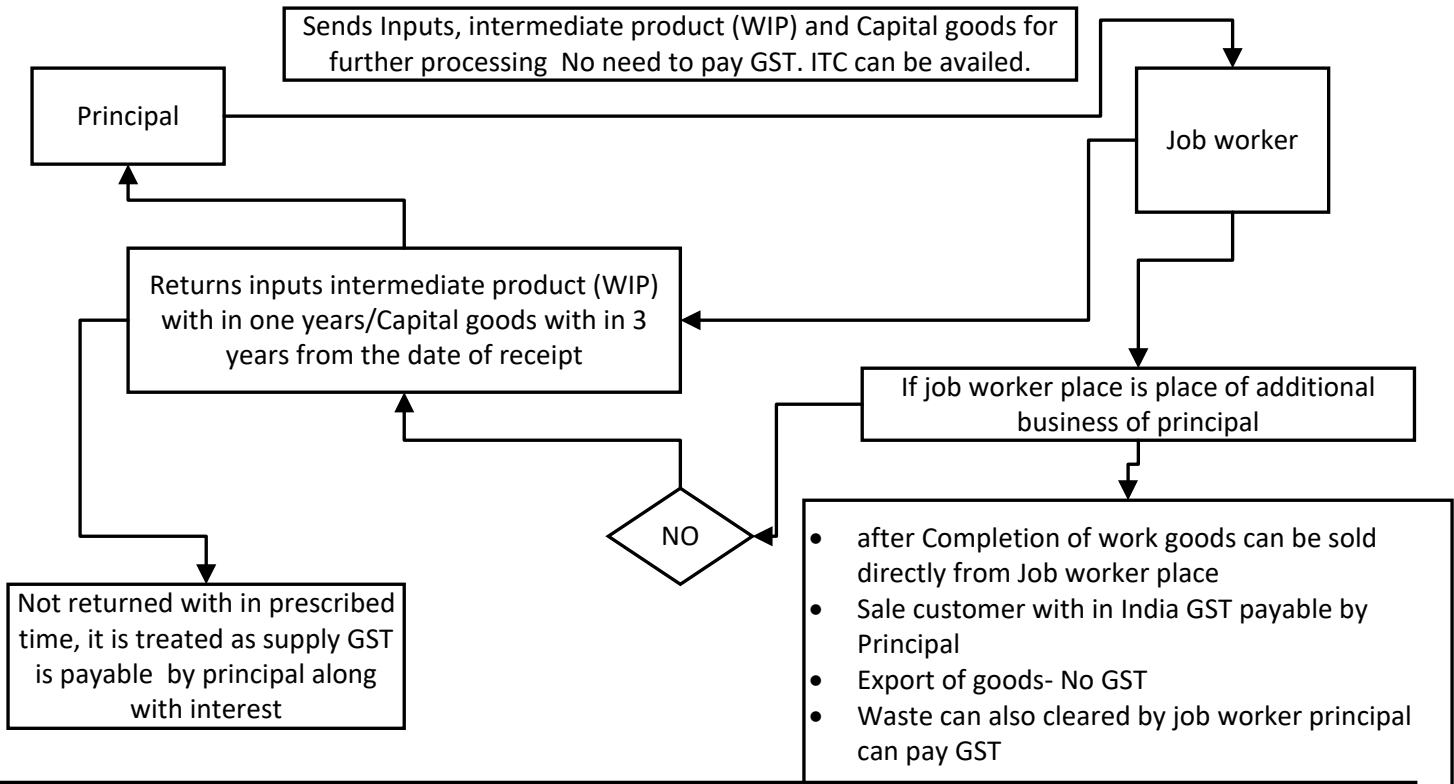
Example: Deemed taxable person

When goods are under transportation or are stored in a warehouse, and the taxable person in respect of such goods cannot be ascertained, the person in charge of such goods shall be deemed to be the taxable person and will be assessed to tax





Job Work Under GST Sec 19 and 143, Rule 45



Example:

A Ltd. sends the goods to B & Co job worker for making finished goods on 30.07.2017. What are the tax implications, in the following cases if GST @ 18% is levied:

B & Co. sends the goods back to X Ltd within one year of being sent.

B & Co. sells the goods directly to the customer in behalf of X Ltd. Make suitable assumptions as required.

Answer

SN	Particulars	Tax implications
1	On supply of goods to B & Co	No GST payable by A Ltd. ALTD can avail ITC. If goods does not return back within one year GST payable by A Ltd with interest
2	B & Co. sells the goods directly to the customer in behalf of X Ltd	No tax liability on job worker B & Co., GST payable by A Ltd at applicable rate of GST. Assumed B & Co is additional place of business of A Ltd.,
3	B& Co sends the finished goods back to A Ltd	there is no tax liability on returning of goods back to the principal i.e. A Ltd within a period of one year

Goods sent from one job worker to another job worker, Notification No 14/2018 dated 23.03.2018

- where the goods are sent from one job worker to another job worker, the challan may be issued either by the principal or the job worker sending the goods to another job worker.
- Where the goods are sent by one job worker to another or are returned to the principal, the challan issued by the principal may be endorsed by the job worker, indicating therein the quantity and description of goods.
- Such endorsed challan may be further endorsed by another job worker, indicating therein the quantity and description of goods.

Clarification on issues related to Job Work

Various issues relating to job work have been clarified vide Circular No. 38/12/2018 dated 26.03.2018 . These are more practical oriented.

APPLICATION OF PROVISIONS OF CENTRAL GOODS AND SERVICES TAX ACT [SECTION 20 OF THE IGST ACT]

The following provisions of CGST Act apply to IGST Act also-

- (i) scope of supply;
- (ii) composite supply and mixed supply;
- (iii) time and value of supply;
- (iv) input tax credit;
- (v) registration;
- (vi) tax invoice, credit and debit notes;
- (vii) accounts and records;
- (viii) returns, other than late fee;
- (ix) payment of tax;
- (x) tax deduction at source [TDS rate under IGST – 2%];
- (xi) collection of tax at source [TCS rate under IGST – not exceeding 2%];
- (xii) assessment;
- (xiii) refunds;
- (xiv) audit;
- (xv) inspection, search, seizure and arrest;
- (xvi) demands and recovery;
- (xvii) liability to pay in certain cases;
- (xviii) advance ruling;
- (xix) appeals and revision;
- (xx) presumption as to documents;
- (xxi) offences and penalties;
- (xxii) job work;
- (xxiii) electronic commerce;
- (xxiv) transitional provisions; and
- (xxv) miscellaneous provisions including the provisions relating to the imposition of interest and penalty

Where the penalty is leviable under the CGST Act and the SGST/UTGST Act, the penalty leviable under the IGST Act shall be the sum total of the said penalties

Anti-profiteering Sec 171

As per section 171(1) : Any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient /Consumer by way of commensurate reduction in prices.

Example on reduction in rate

Particulars	Service tax regime	GST regime
Taxable value	100	100
ST rate 15%	15	
GST rate 5%		5%
Total Invoice value	115	105
The Benefit of Rs.10 (115-105) should be passed on to recipient by way of reduction in price		

Example on benefit of ITC

Particulars	Service tax regime	GST regime
Output tax liability	25	25
Less ITC ST/GST paid	12	12
Less ITC on VAT paid	NIL	5
Net output tax liability	13	8
The Benefit of Rs.5 (13-8) should be passed on to recipient by way of reduction in price		

National Anti-Profiteering Authority [Section 171(2)]

National Anti-Profiteering Authority is being constituted by the Central Government to examine whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods and/or services supplied by him

Anti-profiteering of CGST Rules, 2017 prescribe the provisions relating to constitution of such authority, duties of the authority, orders of the authority etc.

The National Anti-Profiteering Authority shall be a five-member committee consisting of a Chairman who holds or has held a post equivalent in rank to a Secretary to the Government of India; and four Technical Members who are or have been Commissioners of State tax or central tax for at least one year or have held an equivalent post under earlier laws.

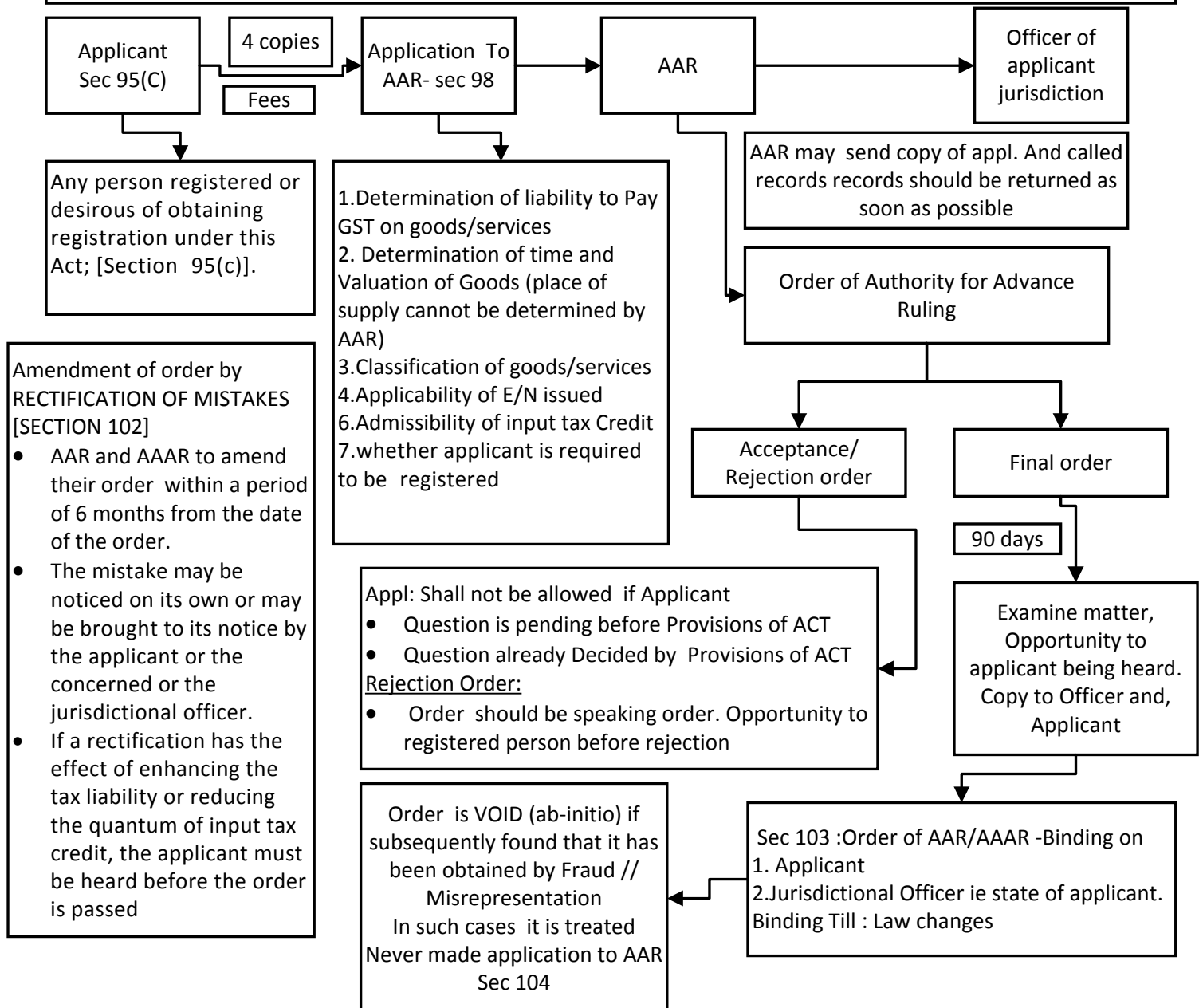
Duties & Powers of National Anti-Profiteering Authority -Section 171(3):

It shall be the duty of the authority-

- ❖ to determine whether the reduction in tax rate or the benefit of input tax credit has been passed on by the seller to the buyer (hereinafter collectively referred to as 'benefit') by reducing the prices
- ❖ to identify the taxpayer who has not passed on the benefit
- ❖ to order for reduction in prices/ return to the recipient, an amount equivalent to the amount not passed along with interest @18%
- ❖ imposition of penalty/cancellation of registration
- ❖ to furnish a performance report to the GST Council by the 10th of the month succeeding each quarter

Authority for Advance Ruling (AAR) and Appellate Authority for Advance Ruling (AAAR)

Advance Ruling: Sec 95 (a): means a decision provided by the Authority or the Appellate Authority in relation to the supply of goods or services both being undertaken or proposed to be undertaken by the applicant; **Appellate Authority for Advance ruling (AAR/ Appellate Authority for Advance Ruling AAAR** constituted under state/ UT is deemed to be AAR under CGST Act.



Amendment of order by RECTIFICATION OF MISTAKES [SECTION 102]

- AAR and AAAR to amend their order within a period of 6 months from the date of the order.
- The mistake may be noticed on its own or may be brought to its notice by the applicant or the concerned or the jurisdictional officer.
- If a rectification has the effect of enhancing the tax liability or reducing the quantum of input tax credit, the applicant must be heard before the order is passed

APPELLATE AUTHORITY FOR ADVANCE RULING (AAAR) sec 99/Sec 110/Sec 101

- Appellate Authority for Advance Ruling (AAAR) is constituted under the respective State/Union Territory Act and not the Central Act
- If there is a difference of opinion between the two members of AAR, they shall refer the point or points on which they differ to the AAAR for hearing the issue
- If the members of AAAR are also unable to come to a common conclusion in regard to the point(s) referred to them by AAR, then it shall be deemed that no advance ruling can be given in respect of the question
- If the applicant / Concerned Officer of registered person jurisdiction is aggrieved with the finding of the AAR an appeal will be filed with AAAR
- The Appellate Authority must pass an order after hearing the parties to the appeal within a period of 90 days of the filing of an appeal.
- If members of AAAR differ on any point referred to in appeal, it shall be deemed that no advance ruling is issued in respect of the question under appeal.
- The said authority can either confirm or modify the ruling appealed against.
- The copy of order of appellate authority should be communicated to applicant and officer

PENALTIES UNDER GST

Sec 122(1) Offences with Penalty Rs. 10,000/- or Tax amount/Refund amount/Input tax credit whichever is higher

1. Supply of any goods/services without issue of any invoice / issue of an incorrect or false invoice
2. Issue of any invoice or bill without supply of goods / services in violation of the provisions of this Act or the rules made thereunder;
3. Collects any amount as tax/ Collects any tax in contravention of the provisions of this Act but fails to pay the same to the Government beyond a period of three months
4. (Fails to deduct/collect the tax as per provisions of Act or less deduction/collection of tax/ fails to pay such tax
5. Takes or utilizes input tax credit without actual receipt of goods / services either fully or partially, in contravention of the provisions of this Act or as per rules
6. Fraudulently obtains refund of tax under this Act;
7. Takes or distributes input tax credit in contravention of section 20, or as per rules
8. Falsifies or substitutes financial records or produces fake accounts or documents or furnishes any false information or return with an intention to evade payment of tax due under this Act;
9. Is liable to be registered under this Act but fails to obtain registration;
10. Furnishes any false information with regard to registration particulars, either at the time of applying for registration, or subsequently;
11. Obstructs or prevents any officer in discharge of his duties under this Act;
12. Transports any taxable goods without the cover of documents as may be specified in this behalf;
13. Suppresses his turnover leading to evasion of tax under this Act;
14. Fails to keep, maintain or retain books of account and other documents as per the Act/Rules
15. Fails to furnish information or documents called for by an officer or furnishes false information or documents during any proceedings under this Act;
16. Supplies, transports or stores any goods which he has reasons to believe are liable to confiscation under this Act;
17. Issues any invoice or document by using the registration number of another registered person;
18. Tampers with, or destroys any material evidence or document;
19. Disposes off or tampers with any goods that have been detained, seized, or attached under this Act

Penalty u/s 122(2)

S N	Nature of Violation	Penalty normal cases	Penalty normal cases
1	who supplies any goods or services or both on which any tax has not been paid or short-paid or erroneously refunded	Rs.10,000/-; or 10% of the tax	Rs.10,000/-; or 100% of the tax
2	where the input tax credit has been wrongly availed or utilized	Whichever is higher	Whichever is higher

Sec 122(3) Offences with Penalty Rs. 25,000/- on a person

- ❖ Aids or abets (Encourage or help) any of the offences specified in Sec 122(1)
- ❖ acquires possession of, or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing or in any other manner deals with any goods which he knows or has reasons to believe are liable to confiscation under this Act/rules;
- ❖ Receives any goods/services which he knows or reason to believe in contravention of Act/ rules
- ❖ fails to appear before the officer of central tax, when issued with a summon for appearance to give evidence or produce a document in an inquiry;
- ❖ fails to issue invoice as per provisions/rules or fails to account for an invoice in his books of account,

PENALTY FOR FAILURE TO FURNISH INFORMATION RETURN [SECTION 123]

- ❖ Where a person who is required to furnish information return under section 150, has not furnished the same within the time specified, the Commissioner or an officer authorized by him serve notice and in requiring him to furnish the information return within a period not exceeding 90 days from the date of service of notice.
- ❖ If the said person still fails to furnish the return within the period specified in notice issued, the penalty will be levied Rs. 100 per day or Rs. 5000 Whichever is higher.

FINE FOR FAILURE TO FURNISH STATISTICS [SECTION 124]

- ❖ Commissioner has got power by notification direct that statistic may be collected relating to any matter in connection with the Act. The commissioner or any person authorised by him may call the concerned persons to furnish information or return (sec 151)
- ❖ If any person required to furnish any information or return under section 151, fails to furnish without a reasonable cause/ willfully furnishes false information or return
- ❖ Penalty Rs. 100 per day or Rs. 25,000/ whichever is higher

GENERAL PENALTY [SECTION 125]

Any person, who contravenes any of the provisions of this Act/Rules for which no penalty is separately provided for in this Act, shall be liable to a penalty which may extend to Rs. 25,000/-

GENERAL DISCIPLINES RELATED TO PENALTY [SECTION 126]

- ❖ Penalty shall be imposed on any person only by giving him an opportunity of being heard i.e. Issue of SCN and proper hearing in the matter
- ❖ The officer should specify the nature of the breach and the applicable law, regulation or procedure under which the amount of penalty is levied
- ❖ No penalty shall be imposed by any officer under this Act for –
 - ❖ Minor breaches of tax regulations,
 - ❖ Procedural requirements of the law,
 - ❖ Any omission or mistake in documentation which is easily rectifiable

POWER TO WAIVE PENALTY OR FEE OR BOTH [SECTION 128]

The Government may, by notification, waive in part or full, any penalty referred to in section 122/123 and 125 or any late fee referred to in section 47 (for delay in filing of return) for such class of taxpayers and under such mitigating circumstances as may be specified therein on the recommendations of the Council.

PUNISHMENTS FOR CERTAIN OFFENCES CRIMINAL PENALTIES) [SECTION 132]

The following are the major offences under the Act which warrant institution of criminal proceedings and prosecution.

According to the provisions of Section 132(1), whoever commits any of the following offences, namely:
—

supplies any goods or services or both without issue of any invoice, in violation of the provisions /RULES with the intention to evade tax;

- a) supplies any goods or services or both without issue of any invoice, in violation of the provisions of this Act or the rules made thereunder, with the intention to evade tax;
- b) issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act/Rules leading to wrongful availment or utilisation of input tax credit or refund of tax;
- c) avails input tax credit using such invoice or bill referred to in clause (b);
- d) collects any amount as tax but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;
- e) evades tax, fraudulently avails input tax credit or fraudulently obtains refund and where such offence is not covered under clauses (a) to (d);
- f) falsifies or substitutes financial records or produces fake accounts or documents or furnishes

- any false information with an intention to evade payment of tax due under this Act;
- g) obstructs or prevents any officer in the discharge of his duties under this Act;
 - h) acquires possession of, or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing or in any other manner deals with, any goods which he knows or has reasons to believe are liable to confiscation under this Act or the rules made thereunder;
 - i) receives or is in any way concerned with the supply of, or in any other manner deals with any supply of services which he knows or has reasons to believe are in contravention of any provisions of this Act or the rules made thereunder;
 - j) tampers with or destroys any material evidence or documents;
 - k) fails to supply any information which he is required to supply under this Act or the rules made thereunder or (unless with a reasonable belief, the burden of proving which shall be upon him, that the information supplied by him is true) supplies false information; or
 - l) attempts to commit, or abets the commission of any of the offences mentioned in clauses (a) to (k) of this section

shall be punishable with the previous sanction of Commissioner, as under

Section	Amount of tax involved	Quantum of Punishment	Cognizable/ Non cognizable
132(1)(i)	> Rs. 500 lakhs	Upto 5 years with fine	Cognizable (Non bailable)
132(1)(ii)	> Rs.200 lakhs ≤ Rs. 500 lakhs	Upto 3 years with fine	Non cognizable (Bailable)
132(1)(iii)	> Rs. 100 lakhs ≤ Rs. 200 lakhs	Upto 1 years with fine	Non cognizable (Bailable)
132(1)(iv)	Offence specified in clauses (f),(g) or (j) of Section 132(1) of the CGST Act, 2017	Upto 6 months or with fine or with both	Non cognizable (Bailable)

Second and subsequent offence:

Section 132(2) of the CGST Act, 2017 where any person convicted of an offence under this section is again convicted of an offence under this section, then, he shall be punishable for the second and for every subsequent offence with imprisonment for a term which may extend to five years and with fine.

Minimum imprisonment is 6 months:

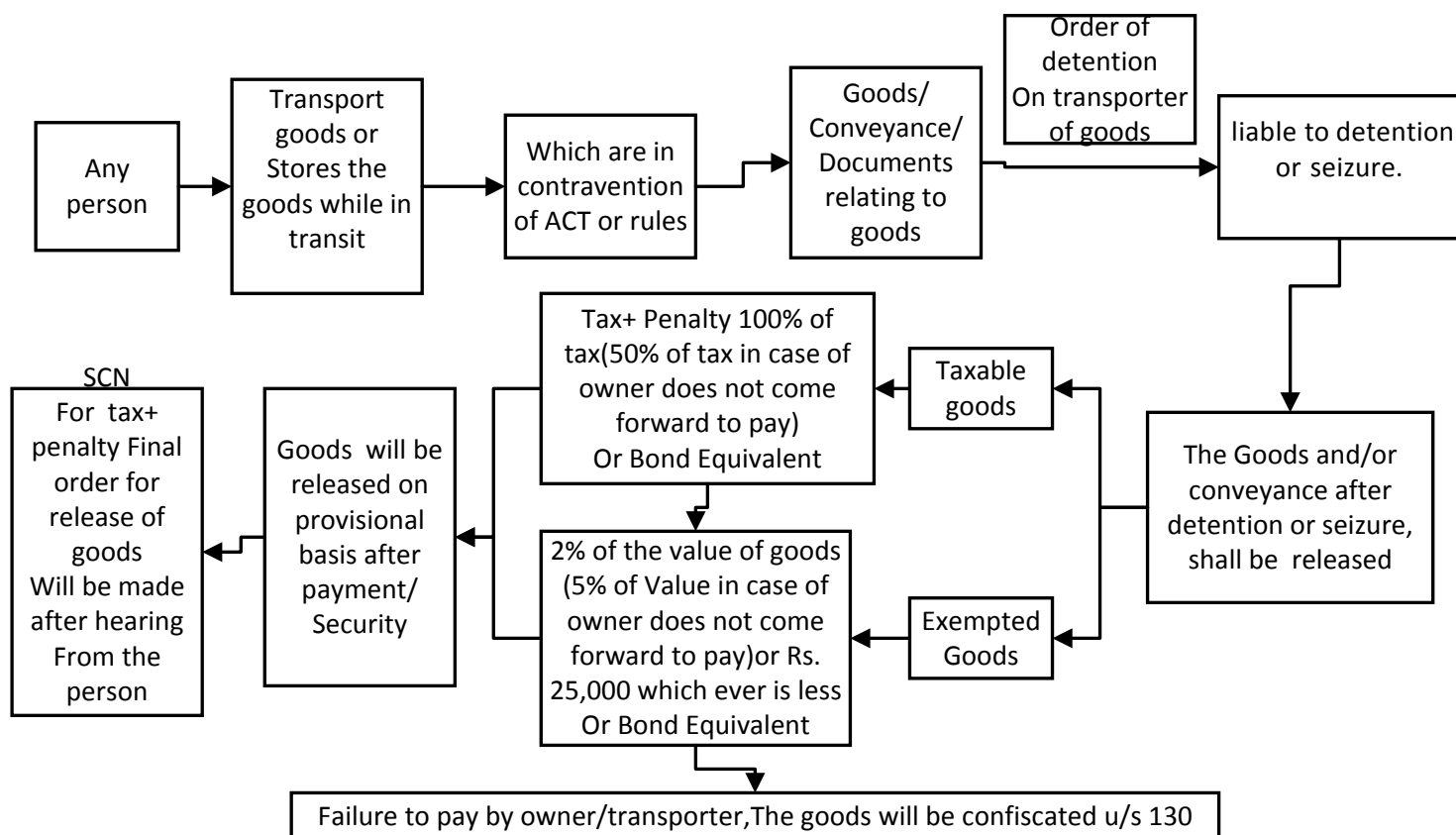
Section 132(3) of the CGST Act, 2017 the imprisonment referred to in clauses (i), (ii) and (iii) of sub-section (1) and sub-section (2) shall, in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the Court, be for a term not less than six months.

Meaning of 'Tax' for the purpose of Section 132

The term "tax" shall include the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or refund wrongly taken under the provisions of this Act, the SGST Act, IGST Act or the UTGST Act and cess levied under the Goods and Services Tax (Compensation to States) Act. [Explanation to Section 132 of CGST Act]

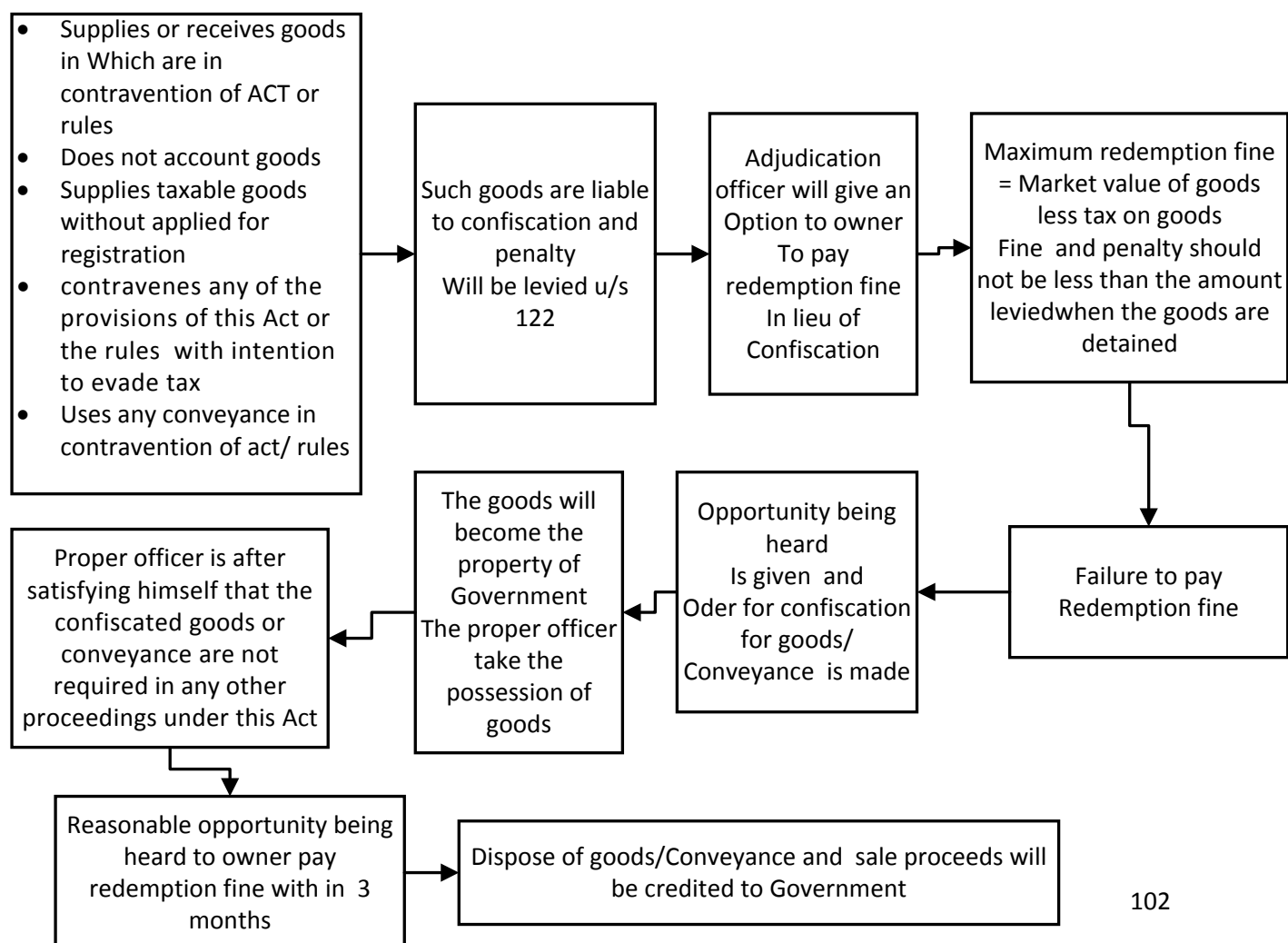
DETENTION, SEIZURE AND RELEASE OF GOODS AND CONVEYANCES IN TRANSIT [SECTION 129]

Over riding provision of all other sections



CONFISCATION OF GOODS OR CONVEYANCES AND LEVY OF PENALTY [SECTION 130]

Over riding provision of all other sections



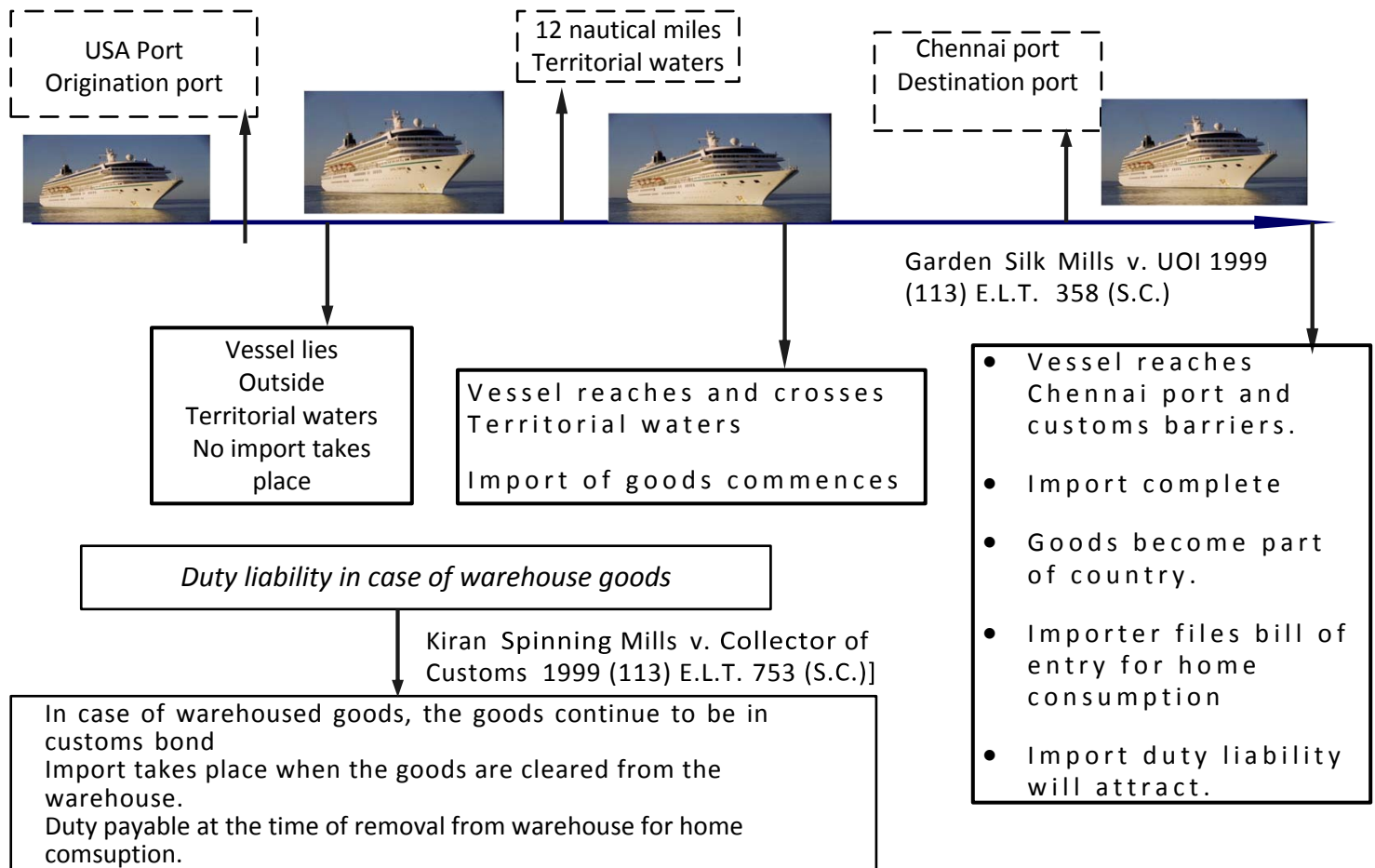
Customs Duty liability Sec 12

Sec 12 of customs provides customs duty shall be levied at such rates specified in Customs Tariff Act, 1975, or any other law for the time being in force, on goods imported into and exported from India. Duty payable on goods imported by government also.

India includes territorial waters of India. Consequently, even an innocent entry of a vessel into the territorial waters of India would result in import of goods. It was impossible to determine when exactly the vessel crossed the territorial waters limit. Hence taxable event was settled as below

Taxable event for Import goods

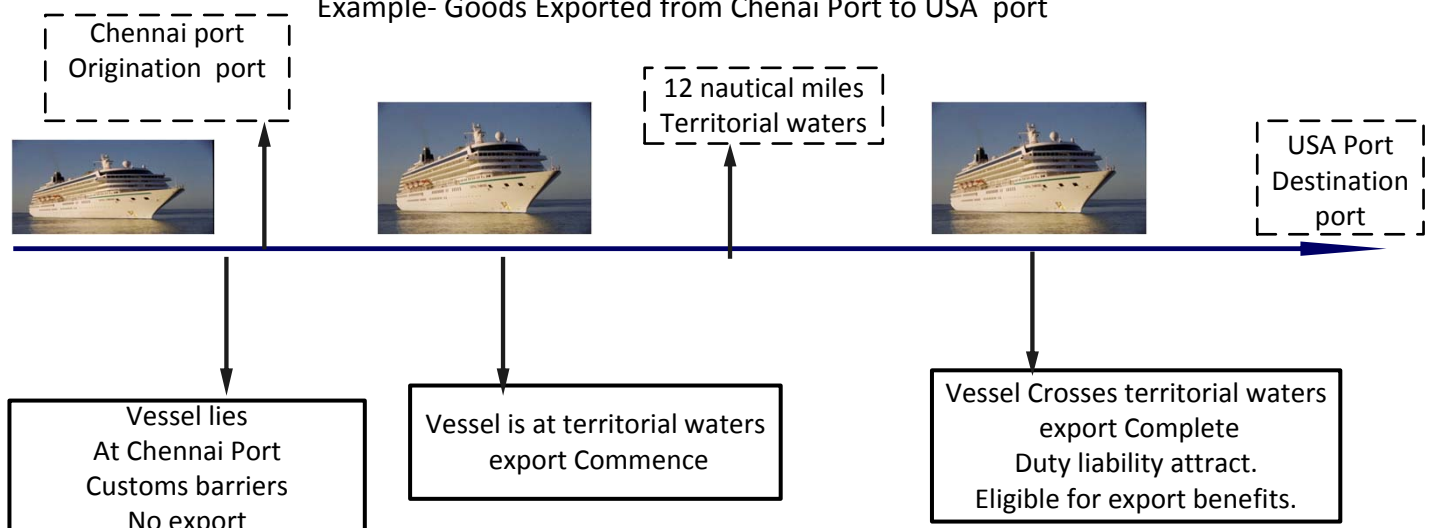
Example- Goods imported from USA Port to Chennai port



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Taxable event for Export goods

Example- Goods Exported from Chennai Port to USA port



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DUTY LIABILITY IN CERTAIN SPECIAL CIRCUMSTANCES

Re-importation of goods produced/manufactured in India [Section 20]

Goods manufactured or produced in India, which are exported and thereafter re-imported are treated on par with other goods, However, the following concessions are available in this regard:

Concessional duty payable in case of re-importation of goods exported for repairs or exported under duty drawback, rebate etc *Notification no. 94/96 Cus. dated 16.12.1996*

SN	Description of goods exported	Amount of import duty payable if re-imported
1	Goods exported under claim for duty drawback, rebate of excise duty, bond without payment of duty, etc	Amount of incentive availed of at the time of export
2	Goods exported for repairs abroad	Duty payable on fair cost of repairs carried out including cost of materials used in repairs (whether such costs are actually incurred or not), insurance and freight charges, both ways
Conditions to claim concession		
1	The time limit for re-importation is 3 years. This is extendable to 5 years.	
2	The exported goods and the re-imported goods <u>must be the same</u> .	
3	In case of Goods exported for repairs abroad the ownership of the goods should also not have changed.	

Example for SN 2

A machine was originally imported from Japan at Rs. 500 lakhs in July, 2017 on payment of all duties of customs. The said machine was exported (sent-back) to supplier for repairs in December, 2017 and re-imported without any re- manufacturing or re-processing in October next year after repairs. Since the machine was under warranty period, the repairs were carried out free of cost.

However, the fair cost of repairs carried out (including cost of material Rs. 6 lakh) would have been ₹ 9 lakh. Actual insurance and freight charges (to and fro) were Rs.3 lakh. The rate of basic customs duty is 10% and integrated tax is 12%. Ignore GST compensation cess.

Compute the amount of customs duty payable (if any) on re-import of the machine after repairs. The ownership of the machine has not been changed during the period.

Answer

Value of goods re-imported after exports [₹ 9 lakh (including cost of materials) + Rs.3 lakh]	12,00,000
Add: Basic customs duty @ 10% (A)	1,20,000
Add: Education Cess @ 3% (A) - (B)	3,600
Value for computing integrated tax under section 3(7) of CTA 1975	13,23,600
Integrated tax @ 12% (₹ 13,23,600 x 12%) - (C)	1,58,832
Total Customs duty and integrated tax payable [(A) +(B)+(C)]	2,82,432

Exported goods re imported

Exemption to re-import of goods and parts thereof for repairs, reconditioning, reprocessing, remaking or similar other process Notification No. 158/1995, dated 14.11.1995

SN	Goods manufactured in India and re- imported for	Time-limit for re-importation from the date of exportation
1	Repairs or for reconditioning	3 years (In case of export to Nepal -10 years)
2	Reprocessing/ Refining/Re-making/similar process	1 year
Conditions to be satisfied		
1	Goods must be re-exported within 6 months (extended to 1 year) of the date of re- importation.	
2	The AC/DC of Customs is satisfied as regards identity of the goods	
3	The importer at the time of importation executes a bond	

Goods derelict, wreck etc. [Section 21]

The concept of 'goods brought into India' is not confined to goods, which are intentionally brought into India, but also extends to derelict, jetsam, flotsam and wreck brought or coming into India.

This implies that apart from goods which are normally imported in the course of international trade, flotsam, and jetsam, which are washed ashore and derelict_and wreck brought into India out of compulsion are also treated on par with trade goods.

SN	Term	Meaning
1	Derelict	This refers to any cargo, vessel, etc. abandoned in the sea with no hope of recovery.
2	Jetsam	This refers to goods jettisoned from the vessel to save her from sinking
3	Flotsam	Jettisoned goods which continue floating in the sea are called flotsam
4	Wreck	This refers to cargo or vessel or any property which are cast ashore by tides after ship wreck

All goods, derelict, jetsam, flotsam and wreck brought or coming into India, shall be dealt with as if they were imported into India, unless it be shown to the satisfaction of the proper officer that they are entitled to be admitted duty-free under this Act

Distinguish between Jetsam and Flotsam

Jetsam and Flotsam are goods which are jettisoned (i.e. thrown with speed) from the vessel into the sea to reduce weight of vessel to prevent it from sinking. They are not abandoned goods. Jetsam gets sunk whereas Flotsam does not sink but floats. Duty is payable on both unless they are entitled to be admitted free of duty.

Exemptions/Remissions/Abatement of duty

Exemption of duty on pilfered goods - Section 13

The term 'pilfer' means, "to steal, especially in small quantities; petty theft". Pilfer does not include loss of total package. If any imported goods are pilfered after unloading, before the proper officer has made an order for clearance for home consumption or deposit in a warehouse; the importer shall not be liable to pay the duty leviable on such goods except where such goods are restored to the importer after pilferage. There is no remedy if goods are pilfered after the order for clearance is made but before the goods are actually cleared.

Other points:

- If goods are pilfered after the order of clearance is made but before the goods are actually cleared, duty is leviable
- Section 13 deals only with pilferage. It does not deal with loss/destruction of goods.
- In case of pilferage, only section 13 applies and claim of refund under section 23(1) is not permissible - *Bharat Earth Movers 2001* (129) ELT 580 (Mad).

Remission of duty on lost destroyed or abandoned goods - Section 23

- If AC/DC satisfied that any imported goods have been lost (otherwise than as a result of pilferage) or destroyed, at any time before clearance for home consumption, remission will be granted.
- The remission of duty is permissible only in the case of total loss of goods, the loss is forever and beyond recovery.
- The loss is generally due to natural causes like fire, flood, etc.
- In case duty has already been paid, refund can be obtained after getting the remission orders.
- Remission will be available even the goods lost/destroyed in goods in warehouse before clearance of home consumption.

Relinquishment of title of goods by Importer

- Importer can relinquish title of goods before an order for clearance of the goods for home consumption or to deposit into a warehouse.
- Even if goods are warehoused, the owner of warehoused goods can relinquish the title of goods any time before order for home clearance is made.
- Owner of any such imported goods shall not be allowed to relinquish his title to such goods regarding which an offence appears to have been committed under this Act or any other law for the time being in force.
- Relinquishment is done by endorsing the document of title, viz. Bill of Lading, Airway Bill, etc. in favour of the Commissioner of Customs along with the invoice. If the importer does so, he will not be required to pay the duty amount.

Reasons for relinquishment

- The goods are in much deteriorated condition and it is not worthwhile to pay duty.
- The assessment of duty is done on much higher side than expected.
- If the importer decides to abandon the goods, he shall not be liable to pay any duty [section 23(2) of Customs Act].
- In case of relinquishment of warehouse goods the importer will be required to pay rent, interest, other charges and penalties that may be payable, but duty will not be payable.

Distinction between section 13 - pilferage and section 23 - remission on damaged goods

Section 13	Section 23(1)
Section 13 deals with pilferage.	Section 23(1) deals with loss or destruction of goods, except pilferage.
No duty is payable at all under Section 13, but duty becomes liable if goods are restored.	Duty is payable under section 23(1), but it is remitted by Assistant Commissioner of Customs. Thus, unless remitted, duty has to be paid under section 23(1).
Importer does not have to prove pilferage.	Burden of proof is on importer to prove loss or destruction.
Pilferage should be before order for clearance is made.	Loss or destruction can be any time before clearance.
Loss must be only due to pilferage.	Loss or destruction may be due to fire, accident etc. but not pilferage; e.g. loss by leakage is covered under section 23.
Under Section 13, duty is normally not paid. However, if duty is paid before examination of goods, refund can be claimed if goods are found to be pilfered during examination but before order for clearance is made.	Under section 23(1), if duty is paid, then refund can be obtained only if remission is granted by Customs Authorities. Thus, remission under section 23(1) is at the discretion of Custom Authorities. [Of course, the discretion has to be exercised judiciously].
Section 13 is not applicable for warehoused goods.	Section 23(1) is applicable for warehoused goods also [as goods transferred to warehouse are not 'cleared for home consumption'].

Abatement of duty on damaged goods - Section 22

Meaning of damage

- The term 'damage' denotes physical damage to the goods. This implies that the goods are not fit to be used for the purpose for which they are meant.

Meaning of deterioration

- Deterioration is reduction in quality of goods due to natural causes

Reduction in duty, if goods are damaged or deteriorated

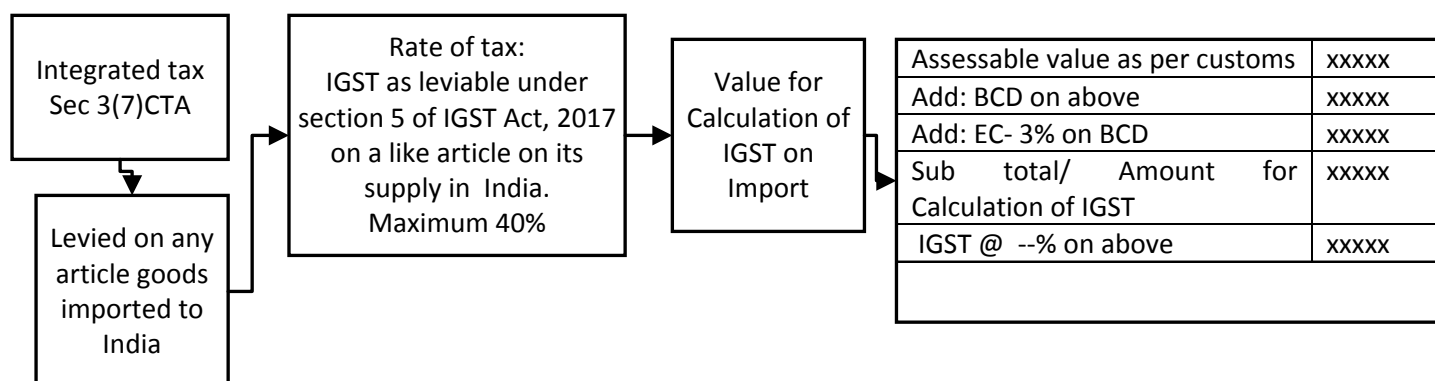
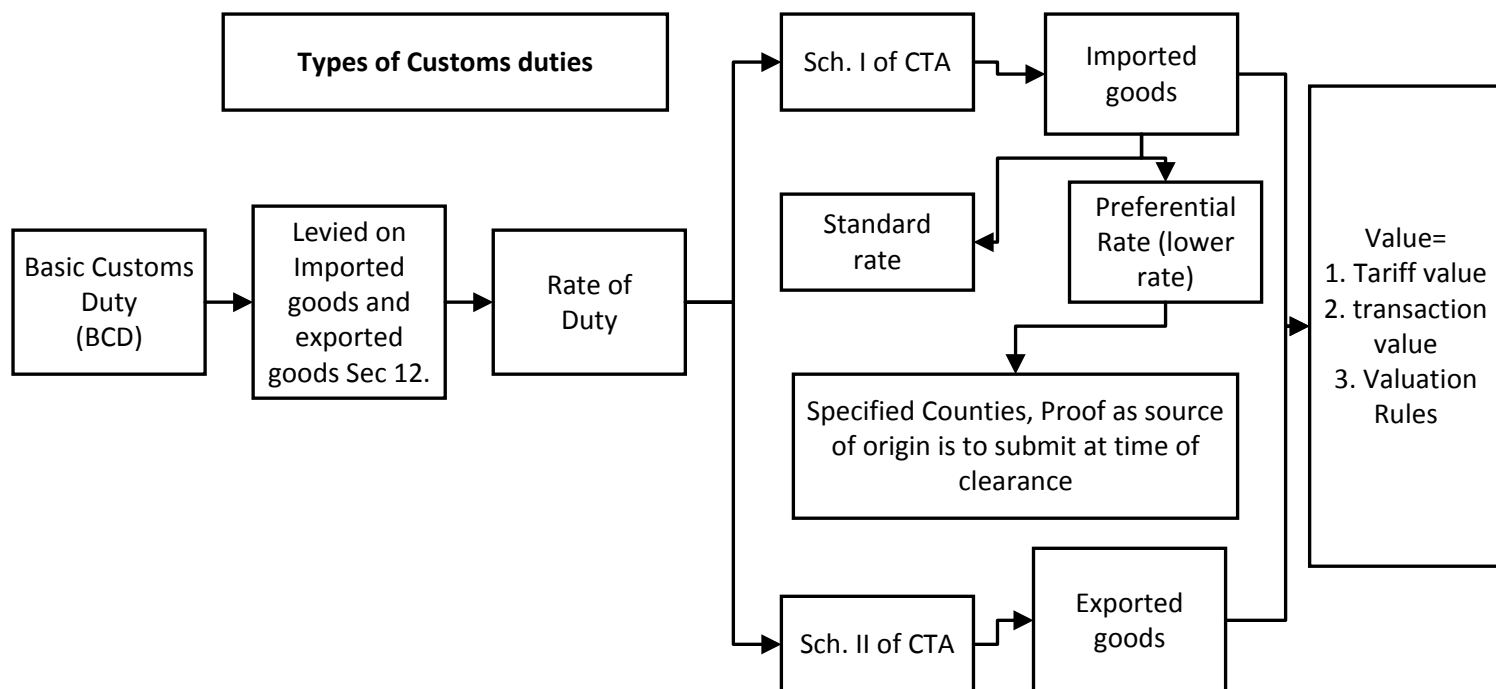
Reduction in duty will be allowed, if goods are damaged or deteriorated in any of the following cases:

- Damaged before or during unloading in India
- Damaged by accident after unloading but before examination of goods for assessment by Customs Officer
- Damaged by accident in warehouse before clearance of goods
- The accident is not due to willful act, negligence or default of importer, his employee or agent
- The customs duty chargeable will be in proportion to the value of damaged good to value of goods before damage or deterioration
- Amount of duty chargeable after abatement can be explained with help of an example. If the value of goods is Rs. 1,00,000 and rate of duty is 10% and after damage the value is Rs. 70,000, then duty payable is Rs. 7,000, i.e., 10% on Rs. 70,000. Rs. 30,000 i.e., the proportionate abatement is 30% (30,000/1,00,000)

- AC may decide the value of damaged goods, or if the owner agrees, the damaged goods may be sold by auction and gross sale proceeds of the auction will be deemed to be the value of goods.
- Willful negligence on the part of the assessee is not permissible for abatement, as held in *Super Chemical Corporation vs. CC* 2003 (156) ELT 248 (Tri-Chen).
- The remission of duty under section 22 could not be granted if the claim thereof has not been made before the Assessing Authority. Held in *Udayani Ship Breakers Ltd.* 2006 (195) ELT 3 (SC).

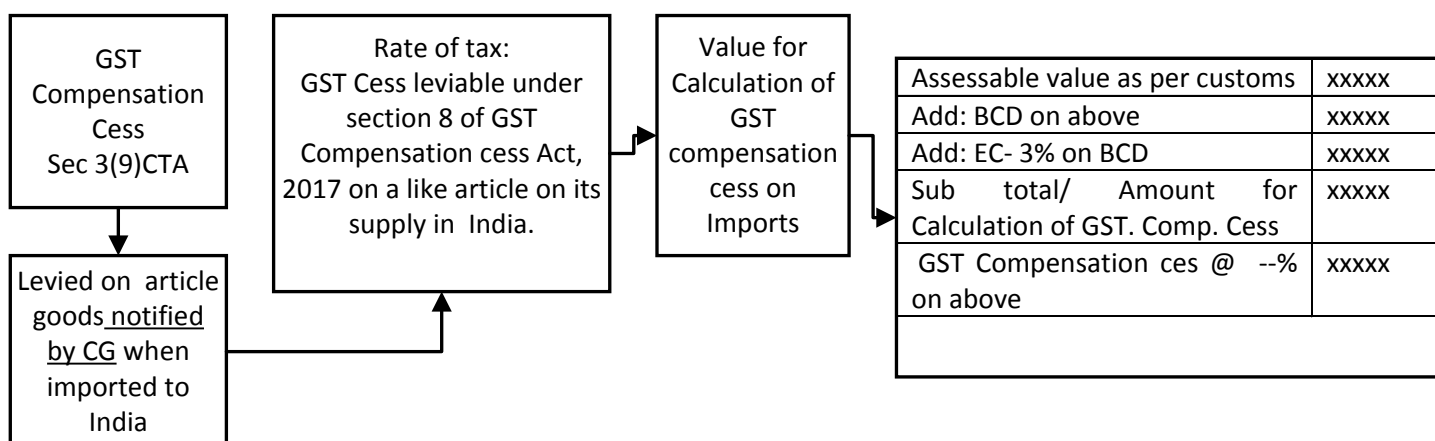
Denaturing or mutilation of goods - Section 24

- An importer can request the Central Government to make rules for permitting to denature/mutilate the imported goods, which are ordinarily used for more than one purpose, so as to render them unfit for one or more of such purpose.
- If any imported goods can be used for more than one purpose and duty is leviable on the basis of its purpose of utilisation, then denaturing or mutilation of such goods is useful.
- After denaturing process, goods can be used only for one purpose and accordingly duty can be levied.
- For example, Ethyl Alcohol, which is not denatured, attracts a higher rate of customs duty whereas denatured ethyl alcohol attracts lower rate of duty.

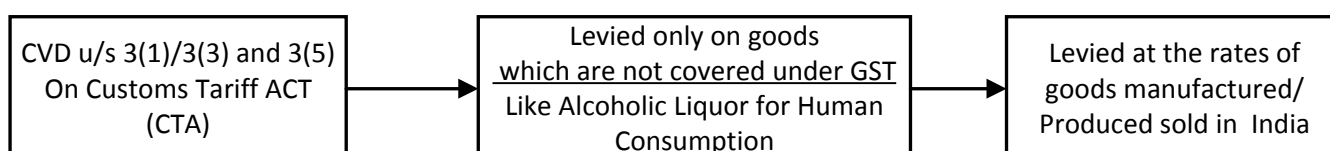


Clarification regarding leviability of Integrated Goods and Services Tax (IGST) on High Sea Sales of imported goods and point of collection thereof vide *Circular No. 33/2017 Cusdated 01.08.2017*

All inter-State transactions are subject to IGST. High sea sales of imported goods are akin to inter state sales. high sea sale shall form part of the value on which IGST is collected at the time of clearance.



GST Compensation cess is compensation paid to Government on intra and inter state supply of goods due to loss of revenue on Implementation of GST The duty or tax or cess chargeable under this section shall be in addition to any other duty imposed under this Act or under any other law for the time being in force.



Protective Duties

Safeguard duty [Section 8B of the Customs Tariff Act]		
1	Circumstances for Impose	Any article is imported into India in increased quantities; Such increased importation is causing or threatening to cause serious injury to domestic industry
2	Amount of duty	Equal to Injury margin (IM), IM= Fair SP in domestic market- landed cost of goods in India i.e., AV + Customs duties
3	Exemption from SG duty	Developing Country sharing $\leq 3\%$ Share of Total Imports to India from that country More than one Developing Country sharing each $\leq 3\%$ & All countries together $\leq 9\%$ Share of Total Imports to India from that country Goods imported by 100% EOU/SEZ if not cleared to DTA
4	Period of duty	Up to 4 years, Extension by CG Max another 6 years
5	Provisional duty	Pending determination of final duty, CG can impose Provisional amount of duty Provisional duty in force for maximum 200 days Upon final determination of duty, if CG is of opinion, there is no injury to domestic industry, the duty collected will be refunded
	Example	X Ltd imported a chemical from a developing country value about Rs. 50 crores. Whether SG can be imposed. (1) if imports from developing country is (a) 3000 crores (b) Rs. 100 crores
	Answer	(1) Percentage of Imports = $50/3000 = 1.67\%$ No SG duty (2) Percentage of Imports = $50/100 = 50\%$ = SG duty payable.
6	Duty on 100% EOU/unit in a SEZ	Section 8B(2A) of CTA, 1975, provides for levy of safeguard duty on articles imported by an 100% EOU/unit in a SEZ that are cleared as such into DTA. In such cases, safeguard duty shall be levied on that portion of the article so cleared as was leviable when it was imported into India

Countervailing duty on subsidized articles [Section 9 of the Customs Tariff Act]		
1	Circumstances for Impose	Any country or territory, directly or indirectly, pays subsidy for exportation of goods to India. Such subsidy relates to export performance. The importation may direct from country or indirect through other country The article may be in the same condition or change by manufacture
2	Amount of duty	Up to the amount Equal to subsidy paid
4	Period of duty	Up to 5 years + Extension another 5 years
5	Provisional duty	Same as safe guard duty under sec 8B

Anti-dumping duty [Section 9A of the Customs Tariff Act]	
Circumstances for Impose	When a large manufacturer from abroad may export goods to India at very low prices compared to the prevailing prices in his domestic market.
	Such dumping may be with intention to cripple the domestic industry or to dispose of their excess stock
	Indian industry which produces —like articles when compared to the allegedly dumped imported goods.
Amount of duty	dumping margin or injury margin, whichever is lower
	Dumping margin means - Normal value in the exporting market- Export price
	injury margin means - fair selling price of domestic industry – landed cost of imported goods.
Period of duty	Up to 5 years + Extension another 5 years
Provisional duty	Same as safe guard duty under sec 8B
Other points	The Central Government will make rules and notify the articles liable for duty
	The Central Government will determine and ascertain the margin of dumping from time to time after carrying out necessary inquiry
	If importer proves he pays duty more than the margin , he is entitled to refund of duty

Example:

An importer imported article from People's Republic of China. Assessable Value as per customs is Rs. 8,88,800/-Total customs duty payable including education cess other than anti-dumping duty is Rs. 2,74,639/- The anti-dumping duty will be equal to the difference between amount calculated @ US \$ 27.97 per kg and 'landed value' of goods. Compute anti-dumping liability.

Solution

Computation of landed value

Assessable Value Under Customs Act,	Rs.	8,88,800.00
Add: All Duties of Customs	Rs.	2,74,639.00
Landed Value as per Anti-Dumping Notification	Rs.	11,63,439.00

Computation of anti-dumping duty

Rate of article as per Anti-Dumping Notification (US \$ 27.97 per kg)	US \$	27,970
Value @ Rs. 44 = 1 US \$	Rs.	12,30,680.00
Less:		
Landed Value as per Anti-Dumping Notification	Rs.	11,63,439.00
Anti-Dumping Duty payable	Rs.	67,241.00

No levy under section 9 or section 9A in certain cases [Section 9B of the Customs Tariff Act]	
1	No article shall be subjected to both countervailing and anti-dumping duties to compensate for the same situation of dumping or export subsidization.

2	These duties shall not be levied on imports from member country of WTO or from a country with whom the GOI has a most favoured nation agreement. This duties can be levied only if import of article threatens to material injury to established industry.
3	The provisional countervailing and anti-dumping duties shall not be levied on any article imported from specified countries unless preliminary findings injury to domestic industry.

Common points for duties from Sec 8B protective duty to Anti-dumping duty u/s 9A	
1	All the duties will be levied through notification by Central Government in Official Gazette
2	Education cess or higher secondary education cess is not payable on these duties.
3	This duties are not applicable to 100% EOU or SEZ unless specifically mentioned in the notification
4	The Act, rules and regulations made under the Customs Act with regard to, demand, refund, assessment, interest, penalty, offences and appeals will also be applicable to these duties

Note:

- Basic customs duty, all other duties are attracted only on imported goods.
- Basic customs duty is only applicable for export goods.

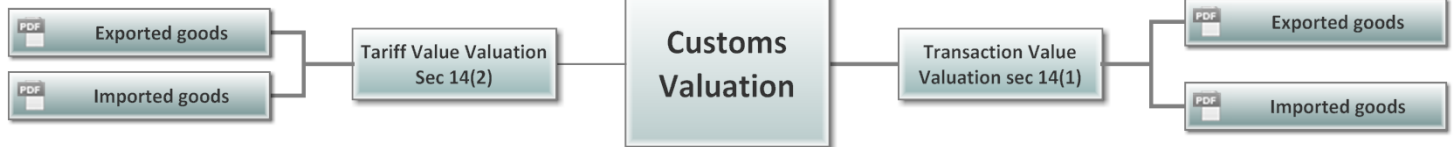
Section 5 - Levy of a lower rate of duty under a trade agreement

- If Government of India enters into a trade agreement with Government of a foreign country or territory, duty is levied at a rate lower than rate of first schedule for import of goods/ articles which are the produce or manufacture of such foreign country or territory.
- The owner is required to make a claim at the time of importation, supported by such evidence as may be prescribed in the said rules, for assessment at the appropriate lower rate under such agreement.
- If any question arises whether any trade agreement applies to any country or territory, or whether it has ceased to apply to India or any foreign country or territory, it shall be referred to the Central Government for decision, and the decision of the Central Government shall be final and shall not be liable to be questioned in any court of law.

Section 8 - Emergency power of Central Government to increase or levy export duties

- Where, in respect of any article, whether included in the Second Schedule or not, and that circumstances exist which render it necessary to take immediate action, the Central Government may, by notification in the Official Gazette, direct an amendment of the Second Schedule to be made so as to provide for an increase in the export duty leviable or, as the case may be, for the levy of an export duty, on that article.
- The duty will be valid till the date prescribed in the notification.
- The duty can be rescinded, reduced or increased by a notification.
- Such notification should also be placed before Parliament for approval in the next session.

Customs Valuation 1-



Tariff value is over riding of transaction value. If tariff values fixed, value should be as per tariff value

"Transaction value" Valuation Imported goods

Transaction value of imported goods read with Valuation rules

Cost and services to add Rule 10(1)

- (a)(i) Commission & Brokerage Paid in India
- (ii) Cost of Containers;
- (iii) Cost of Packing (*Labour or Material*).
- (b) Value of Assists [4 Types] Place of origin India or Outside India
 - i) Materials / Components / Parts contained in FP
 - ii) Tools/ Moulds / Dies / Similar Items :
 - iii) Materials consumed in production of imported goods:
 - iv) Eng. / Development/Art Work/ Design Work / Plans & Sketches (*Place of Origin: Must be Outside India*):
- (c) Royalties & License Fees in connection with sale except "*Charges for Right of Reproduction of Imported Goods in India*"
- (d) Subsequent Sale Proceeds – accruing to the seller [But "*Dividend Payments*" – Not Includible (*since payment of dividend can't be equated with accrual of sale proceeds subsequently*)]
- (e) All Other Payments made by buyer
 - Payment is made as a condition for sale of imported goods; &
 - Payment is made by buyer to the seller directly or to a third party to satisfy an obligation of seller

Rule 10: Transaction value = Price of goods sold at the time and place of importation + costs and services, assists (i.e. CIF Value All costs up to destination port)

Rule 3: TV will be accepted only

1. No restrictions on use of goods (except law, geographical use restrictions) Restrictions which do not affect value of goods.
2. Price is not subject to condition where price cannot determine.
3. Buyer and seller not related to each other

TV in case of relative is accepted if (i) relationship does not influence price (ii) Importer demonstrates Price is close approximation to identical/similar goods /deductive value/computed value

Rule 12: When proper officer has doubt about truth and accuracy of TV, he can ask information, still doubt can reject TV by giving opportunity

Cost and services to add Rule 10(2) Notification 91/2017-26.09.2017

(Cost of Transport;

- Actual amount. If not ascertainable 20% of FOB, In case of Air, Actual restricted to 20% of FOB
- Transit Insurance; Actual amount, if Not ascertainable 1.125% of FOB
- (c) Landing Charges – flat 1% of CIF . loading and handling charges incurred at the load port) shall now be includible in the transaction value. (Transport and insurance up to place of import)
- ship demurrage charges on chartered vessels, lighterage or barge charges.

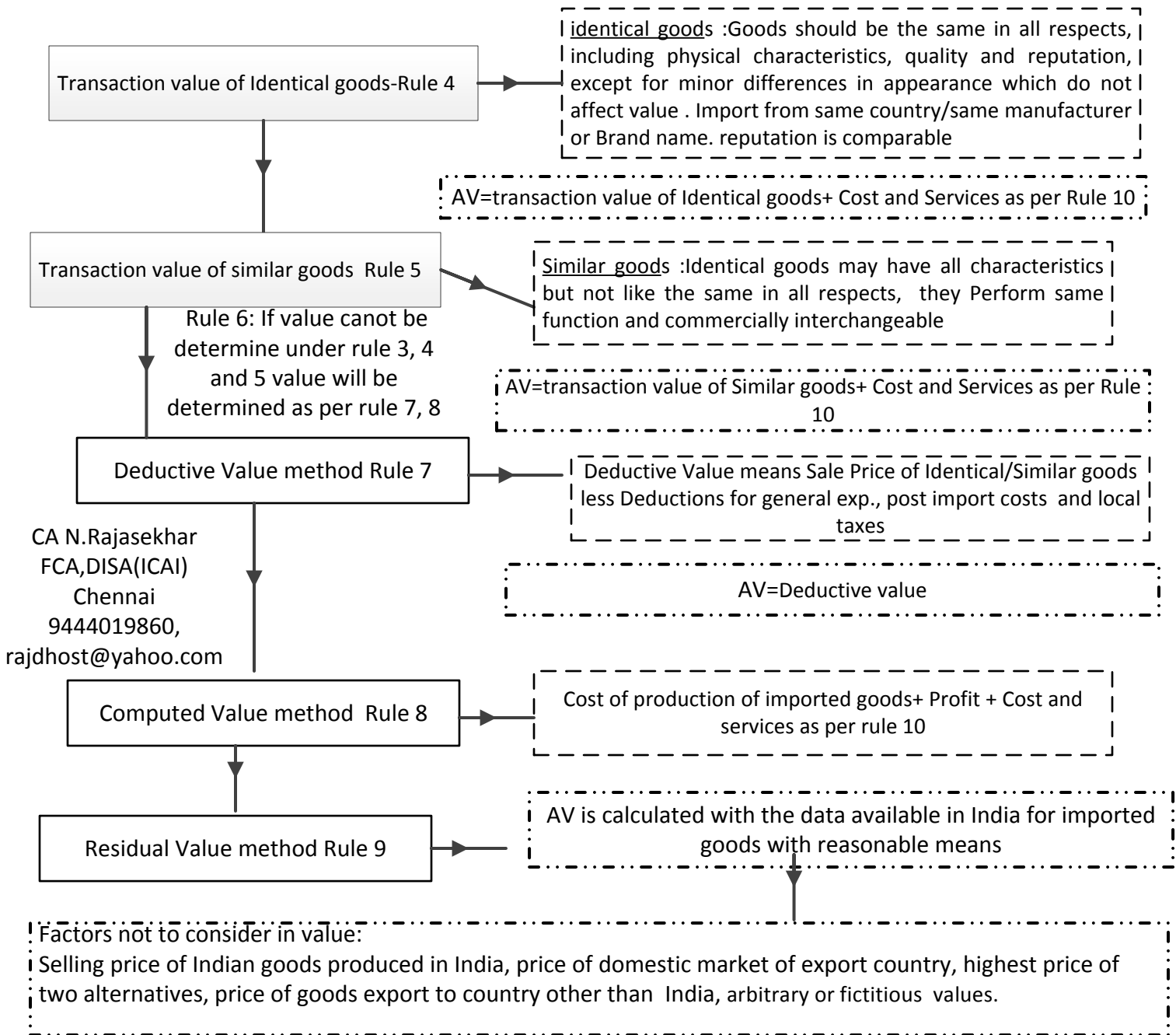
Cost and services to exclude not to add (post importation costs)

- Charges for Construction, Erection, Assembly, Maintenance or Technical assistance, Undertaken after importation
- The cost of transport after importation
- Duties and taxes in India
- Interest on Delayed Payments
- costs related to transshipment of goods (from ports to ICDs; port to port, port to CFS, Airport to Airport, etc.) within India will be excluded,
- goods imported by sea or air and transshipped to another customs station in India, the cost of insurance, transport, loading, unloading, handling charges associated with such transshipment s 113

Work out problems from RTP May/ nov 2018 on Valuation. Duty calculation

Customs Valuation 2

If transaction value is not determinable under rule 3, the value shall be determined as per following rules in order



Meaning of relative Rule 2 (2)

1. They are

- Officer/Director in each other's business
- Legally Recognized partner
- Employer & Employee;
- Members of same family;

2. Both of them

- Are controlled by a third person;
- Control a third person;

ONE OF THEM

- Control the other

3. Any person

- Owns/controls 5% or more of voting power/shares in both of them;
-

Explanation:

- 1. Person include legal person
- 2. Sole Distributor/ Sole Selling Agent – shall not be treated as RP unless they fall under any of the above criteria

Customs Valuation 3

"Transaction value" Valuation Export goods

Transaction value of Export goods

: Transaction value = Price of goods sold at the time and place of Exportation (i.e FOB Value) All costs up to origination port

T V in case of relative is accepted if (i) relation ship does not influence price

Rule 8: When proper officer has doubt about truth and accuracy of TV, he can ask information, still doubt can reject TV by giving opportunity

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If transaction value is not determinable under rule 3, the value shall be determined as per following rules in order

Transaction value of goods of kind and Quality -(Determination of Export Value by Comparison-Rule 4

Goods of kind and Quality -similar to that Identical goods/ similar goods

AV=transaction value of goods of kind and Quality-

Computed Value method Rule 5

AV= Cost of production of export goods+ Design charges+ Profit

Residual Value method Rule 6

AV is calculated with the data available in India for export goods with reasonable means

Rule 7: **Declaration by the exporter:** The exporter shall furnish a declaration relating to the value of export goods.

Rule 7: **Declaration by the exporter:** The exporter shall furnish a declaration relating to the value of export goods.

Rule 8: **Rejection of value of proper officer:** If the Proper officer is of the doubt about truth and accuracy of the value, may ask information give opportunity to the exporter and determine the value

Import Procedures

Procedure By Person in-charge PIC

((Provisions relating to clearance of Imported Goods))

Sec 29

- Arrival of Conveyance only at Customs Port / Airport in India)
- Arrival at other place is possible: -
- Forced landing or calling due to Accident // Stress of Weather // Other Unavoidable reason
- Duty of PIC : shall report the arrival to nearest Police/ Customs Officer. No unloading. Not allow departure of passenger (Exception health safety, preservation of life property)

Sec 30: Delivery of IGM/IR by PIC of Conveyance/ Other Notified person

PIC file IGM Before arrival of Vessel, air Carft, Import report in case of vehicle with in 12 hours after arrival

Belated filing --- Penalty upto Rs 50,000

PASSENGER AND CREW ARRIVAL MANIFEST AND PASSENGER NAME RECORD INFORMATION. [SECTION 30A]

- PIC Before arrival of Vessel, air Carft, Vehicle should file passenger and crew arrival manifest AND the passenger name record information in such form as may be prescribed
- Failure with out sufficient cause Penalty Rs.50,000

Sec 31 Imported goods not to be unloaded unless Entry inwards granted

- In case of import by Vessel --- unloading of goods only subsequent to grant of Entry Inward
- Entry Inward is granted only subsequent to filing of IGM.
- For unloading of baggage, mails, perishables, hazardous material Entry Inward is not required:

UNLOADING of goods

- Sec 32 : Imported goods not to be unloaded unless mentioned in the Import Manifest (IGM) / Import Report (IR)
- Sec 33 : Imported goods shall be unloaded at approved landing places approved by Commissioner only r]
- Sec 34 : Imported goods shall be unloaded under supervision of customs officer
- Sec 35 : Restrictions on goods being water-borne (Boat Note is must --- which is obtained from PO)
- Restrictions on unloading of goods on holidays etc. – Unloading only upon payment of Merchant Overtime Fees)

Procedure By Importer

(Provisions relating to conveyance carrying Imported Goods)

Sec 46 : Entry of goods on Importation

- Importer should file BOE for Home consumption/ Warehouse Electronic filing with integrated declaration / ware house to home consumption latter
- BOE can be file after filing of IGM/IR before the end of next following day of arrival of conveyance excluding holidays. Charges will be levied for late filing. PO allow advance filling of BOE in 30 days advance before expected arrival vessel, aircraft, vehicle
- PO allow if no fraudulent intention/interest of revenue substitute BOE substitute home consumption to warehouse or vice versa
- PO allow amendment change in IGM/IR/BOE if no fraudulent intention/clerical error, mistake
- Date of filing of substituted B/E shall be considered as “relevant date” for the purposes of Sec 15 (i.e., for determination of applicable rate of duty and assessable value)
- Amendment of BOE after clearance is allowed based on proof of documents.
- Importer shall produce all other documents for the purpose of assessment to PO
- Sec 45 unloaded in a customs area shall remain in the custody of Port/airport
- person having custody of any imported goods in a customs area shall keep a record
- person shall not permit such goods to be removed from the customs area without the written permission of the Proper Officer
- **Sec 47: Clearance of goods for Home Consumption**
- B/E filed for H/C will be assessed and returned – Assessed Duty & other charges
- Importer pay duty on the day of presentation of BOE in case of self assessment or with in 1 working day in other cases. CG got power to allow deferred payment of duty to any class of importers.

Time limit to pay duty and deferred payment of duty [SECTION 47]

The importer shall pay the import duty—

- ❖ on the date of presentation of the bill of entry in the case of self- assessment; or
- ❖ within one day (excluding holidays) from the date on which the bill of entry is returned to him by the proper officer for payment of duty in the case of assessment, reassessment or provisional assessment;

MANDATORY ELECTRONIC PAYMENT OF DUTY

- ❖ The Central Government has notified that Importers registered under Accredited Clients Programme, Importers paying customs duty of Rs. 1 lakh or more per bill of entry has to make mandatory electronic payment.

Deferred payment of duty

- ❖ Central Government may permit certain class of importers to make deferred payment of said duty or any charges in such manner as may be provided by rules
- ❖ Central Government has permitted importers certified under Authorized Economic Operator programme as AEO (Tier-Two) and AEO (Tier-Three) to make deferred payment of import duty (eligible importers).
- ❖ Directorate General of Performance Management under CBEC makes an order, which is popularly known as “pass out of customs charge order” the bill of entry (duplicate) copy is produced to the custodian who delivers the goods to the importer.
- ❖ An eligible importer intending to avail the benefit of deferred payment shall intimate to the Principal Commissioner/Commissioner of Customs, having jurisdiction over the port of clearance, his intention to avail the said benefit who on being satisfied with the eligibility of the importer allow him to pay the duty by due dates.

Due dates of deferred payment of duty

SN	Goods corresponding to Bill of Entry returned for payment from	Due date of payment of duty, inclusive of the period (excluding holidays) as mentioned in section 47(2)
1	1st day to 15th day of any month	16th day of that month
2	16th day till the last day of any month other than March	1st day
3	16th day till the 31st day of March,	31st March

- ❖ The Importer fails to pay the duty either in full or in part within the time so specified, shall pay interest on the duty not paid or short-paid @ 15% p.a. till the date of its payment.
- ❖ Electronic payment of duty: The eligible importer shall pay the duty electronically: However, the Assistant/Deputy Commissioner of Customs may for reasons to be recorded in writing, allow payment of duty by any mode other than electronic payment.
- ❖ Deferred payment not to apply in certain cases: If there in default in payment of duty by due date more than once in three consecutive months, this facility of deferred payment will not be allowed unless the duty with interest has been paid in full.
- ❖ The benefit of deferred payment of duty will not be available in respect of the goods which have not been assessed or not declared by the importer in the entry.
- ❖ The benefit of deferred payment of duty is also applicable when duty is payable in case of exports.

PASSENGER AND CREW DEPARTURE/ARRIVAL MANIFEST AND PASSENGER NAME RECORD INFORMATION

SN	Particulars	Imports Sec 30A	Exports Sec 41A
1	Who should file	Person in charge or specified Person	Person in charge or specified Person
2	When to file	Before arrival of vessel/air craft Upon arrival in case of Vehicle	Within such time prescribed (before leaving the conveyance)
3	Failure to deliver without a proper sufficient cause	Penalty Rs. 50,000	Penalty Rs. 50,000

Disposal if goods are not cleared within 30 days [Section 48]

- ❖ Goods must be cleared within 30 days after unloading.
- ❖ Customs Officer can grant extension.
- ❖ If not cleared, goods can be sold after giving notice to importer.
- ❖ There is no time limit on clearance thereof for sensitive goods like animals, perishable goods and hazardous goods.
- ❖ Arms and ammunition can be sold only with the permission of CG.

Sec 37: Power to Board Conveyance

Proper officer may, if he thinks it necessary, board any conveyance carrying imported goods.

Sec 38: Power to require production of documents and ask questions

Any document may be demanded from PIC --- Questions may also be asked by the Proper officer

Relinquishment of title of goods by Importer

- ❖ Importer can relinquish title of goods before an order for clearance of the goods for home consumption or to deposit into a warehouse. /In case of WH goods before order for H/C
- ❖ Owner of any such imported goods shall not be allowed to relinquish his title to such goods regarding which an offence appears to have been committed under this Act or any other law for the time being in force.
- ❖ Relinquishment is done by endorsing the document of title, viz. Bill of Lading, Airway Bill, etc. in favour of the Commissioner of Customs along with the invoice. If the importer does so, he will not be required to pay the duty amount.

Reasons for relinquishment

- ❖ goods are in much deteriorated condition and it is not worthwhile to pay duty./assessment at higher side
- ❖ If the importer decides to abandon the goods, he shall not be liable to pay any duty [section 23(2) of Customs Act].
- ❖ In case of relinquishment of warehouse goods, the importer will be required to pay rent, interest, other charges and penalties that may be payable, but duty will not be payable

Import procedures -3

Coastal goods

- Coastal goods mean goods transported from one port in India to another port in India. For example, transport between Chennai and Mumbai
- Coastal goods do not include imported goods.
- No export or import is involved, but control is necessary to ensure that coastal goods are not illegally diverted for export. Coastal goods can leave only after obtaining written order from the Customs Officer.

Entry for coastal goods [Section 92]

- The Consignor should submit prescribed bill of coastal goods to Customs Officer.
- Every such consignor, while presenting a bill of coastal goods shall, at the foot thereof, make and subscribe to a declaration as to the truth of the contents of such bill.

Coastal goods not to be loaded until bill relating thereto is passed [Section 93]

- Master of vessel will load these only after 'bill of coastal goods' is passed.

Master of a coasting vessel to carry an advice book [Section 95]

- Master of Vessel will carry an 'Advice Book' where the Customs Officer will make entries.
- This 'Advice Book' has to be presented for inspection of Customs Officers, if called for, after loading the vessel.

No coasting vessel to leave without written order [Section 97]

- The master of a vessel which is carrying coastal goods shall not depart from such a port until a written order to that effect has been given by the Proper Officer.

No such written order shall be given until:

- The master of the vessel has answered the questions put to him under section 38;
- All charges and penalties due in respect of that vessel or from the master thereof have been paid or the payment secured by guarantee;
- The master of the vessel has satisfied the Proper Officer that no penalty is leviable or the payment of any penalty has been secured by guarantee or deposit of such amount as the proper officer may direct.

Unloading of coastal goods [Section 96]

- Unloading of coastal goods should be done only at Customs Port or the coastal port appointed by CBEC under section 7 of Customs Act.
- On arrival, all bills relating to goods which are to be unloaded will be delivered to the Customs Officer.
- Unloading can be done only after obtaining permission from the Customs Officer.
- Customs Officer can inspect the goods and questions and ask for documents relating to goods.
- Goods will be unloaded at an approved place under supervision of the Customs Officer.

Clearance of coastal goods at destination [Section 94]

- The master of a vessel carrying any coastal goods shall carry on board the vessel all bills relating to such goods delivered to him.
- He shall, immediately on arrival of the vessel at any customs or coastal port, deliver to the Proper Officer of that port all bills relating to the goods which are to be unloaded at that port.

- Where any coastal goods are unloaded at any port, the Proper Officer shall permit clearance thereof if he is satisfied that they are entered in a bill of coastal goods delivered to him.

Application of certain provisions of this Act to coastal goods, etc. Sec 98

(1) Sections 33, 34 and 36 shall, so far as may be, apply to coastal goods as they apply to imported goods or export goods

Power to relax [Section 98A]

- If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification in the Official Gazette, exempt generally, either absolutely or subject to such conditions as may be specified in the notification, coastal goods or vessels carrying coastal goods from all or any of the provisions of this Chapter.

Vessels carrying exclusively coastal goods exempted from the provisions of sections 92, 93, 94, 95, 97 and 98(1) of the Customs Act, 1962 Notification No. 56/2016 Cus (NT) dated 27.04.2016

Import and export through courier

- Import/export through courier is permitted only through specified cities Mumbai, Delhi, Calcutta, Chennai, Bangalore, Hyderabad, Ahmedabad, Jaipur, Trivandrum and land customs station.
- Courier Agency should register with the Commissioner of customs and should be financially viable.
- Courier Agency should execute a bond/security, if any.
- Registration can be cancelled for misconduct or failure to comply with regulations.
- Agency should advise the client about rules and regulations.
- Agency should disclose all the information to the Assessing Officer.
- It is not necessary that the goods should carry by the Courier Agency itself. The person-in-charge can carry the goods.
- Some goods like animals, pets, maps perishables, chemicals, depicting boundaries etc. should not be imported/exported.
- Weight of each packet in courier should not exceed 70 kg.
- All goods should be classified into documents, free gifts, samples and dutiable goods.
- The Authorized Courier also has to file 'Courier Bill of Entry'/Courier Shipping bill in a prescribed form.
- The courier bags should be kept separately and shall be dealt with only as per directions of the Commissioner of Customs.
- Dutiable goods should be packed separately with appropriate labels.
- These goods must be accompanied by a declaration by the sender with respect to the contents of the package and its value.
- Samples upto `Rs. 50000 in respect of exports and ` Rs.10000 for imports and free gifts upto `Rs. 25000 in respect of exports and ` 10000 for imports per consignment is allowed.
- Import/export of jewellery/diamond, each consignment should not exceed Rs. 25 lakh.
- Authorized Courier has to submit a declaration in the prescribed form.
- If imported goods are not cleared within 30 days, these will be disposed of.
- Goods brought in customs area must be exported within 7 days.
- If not exported within 7 days, these will be disposed of. The period can be extended by Assistant Commissioner in deserving cases.

Import and export through post

- Separate provisions are given for import/export through post.
- Label and declaration are the entry for purpose of postal articles. (section 82)
- Filing of separate Bill of Entry or Shipping Bill is not necessary for import/export.
- Regulations for import/export by post – section 84
- Board makes regulations for procedures for examination and assessment of duty and transit/transshipment of goods imported by post.

Accordingly, CBEC has made rules as follows:

- The parcel bill/letter mail bill will show details like Serial number assigned by office of posting, name of office of posting, Destination, weight, local number, contents as ascertained by Customs; Declared value in foreign currency, rupee value, rate of duty, amount of duty and remarks;
- Postal parcels will be allowed to pass from port/airport to Foreign Parcel Department of Post Offices without payment of customs duty;
- Postmaster will hand over the packets to the Principal Appraiser;
- The mailbag will be opened and scrutinized by the Postmaster under supervision of the Principal Postal Appraiser of Customs;
- Customs Appraiser will mark the parcels that are required to be detained as
 - necessary particulars are not available or
 - misdeclaration or under-valuation is suspected or
 - goods are prohibited for import;
- Other parcels will be assessed without opening on the basis of details given in the parcel bill or despatch notes;
- The duty will be assessed and will be entered on parcel bill;
- These will be audited and returned to the Postmaster;
- The Postmaster will hand over the parcel to the addressee only after collecting the customs duty;
- Customs duty collected by the postal department will be periodically credited to Customs department.

Boat Notes/Restrictions on goods being water-borne [Section 35]

- There are certain customs ports where the ships cannot come to the shore for unloading or loading. In these places the cargo is ferried from the ships anchored at mid-sea to the port in boats, otherwise known as lighter.
- Sometimes if a vessel has to unload only a small cargo, it may not spend time in having berth in the port.
- In some cases not all ships arriving in the port get a berth. They have to wait for some time before they get allotment of berth. At times the ships have tight itinerary. In such cases the import cargo is taken from the ship to the shore and the export cargo is taken from the shore to the ship in boats.
- If the small cargo is to be sent to shore, it may be loaded in a small boat and sent to shore.
- Such small boat must be accompanied by a 'Boat Note'.
- Boat Notes Regulations provide that Customs Officer will issue such Boat Notes.
- It will be maintained in duplicate and should be serially numbered.
- Boat Note should be in a prescribed form.
- Loading in to a small boat from a ship should be done only when such a small boat is carrying a boat note.

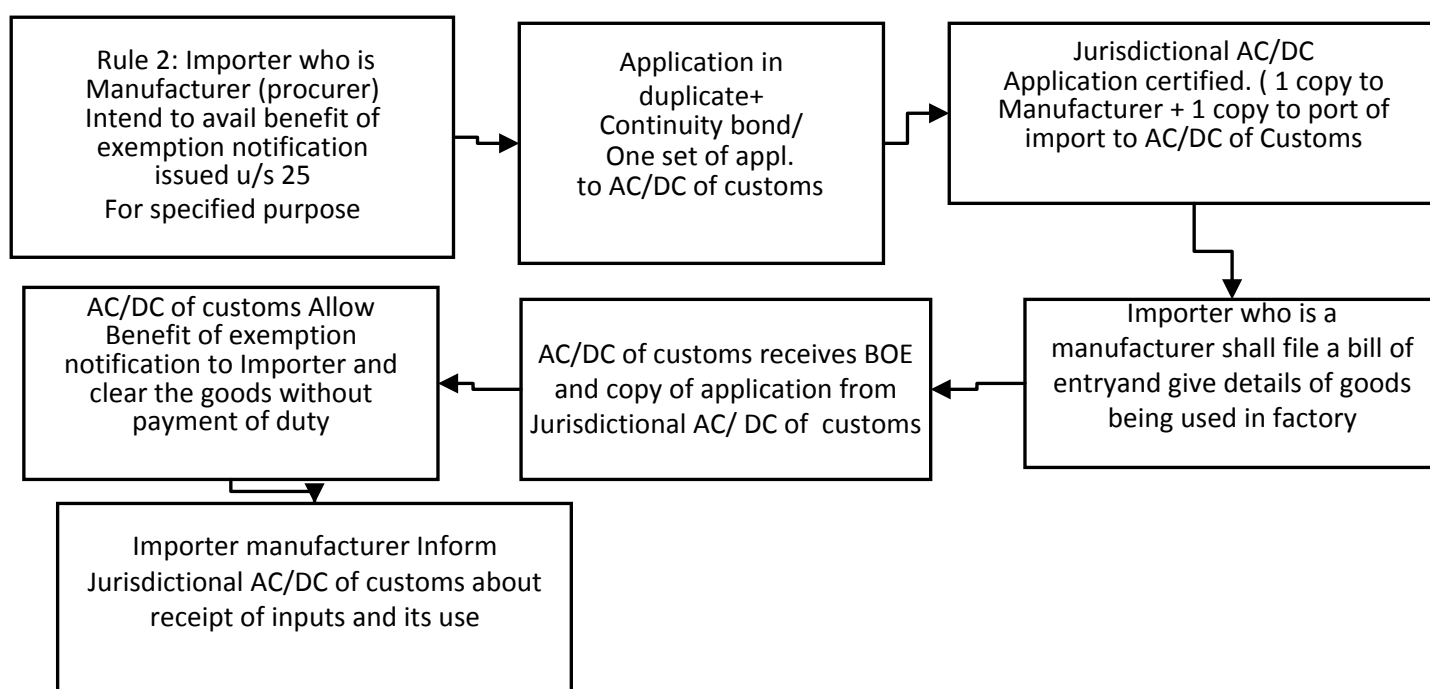
- Unloading from a small boat to a ship for export should not require a boat note, when a small boat is carrying shipping bill. Otherwise a boat note is required.
- Board may, by notification, relax these conditions to any class of goods.

Boat Note is also required for transshipment of cargo, i.e. transfer from one ship to another or for re-shipment

Import procedures -4

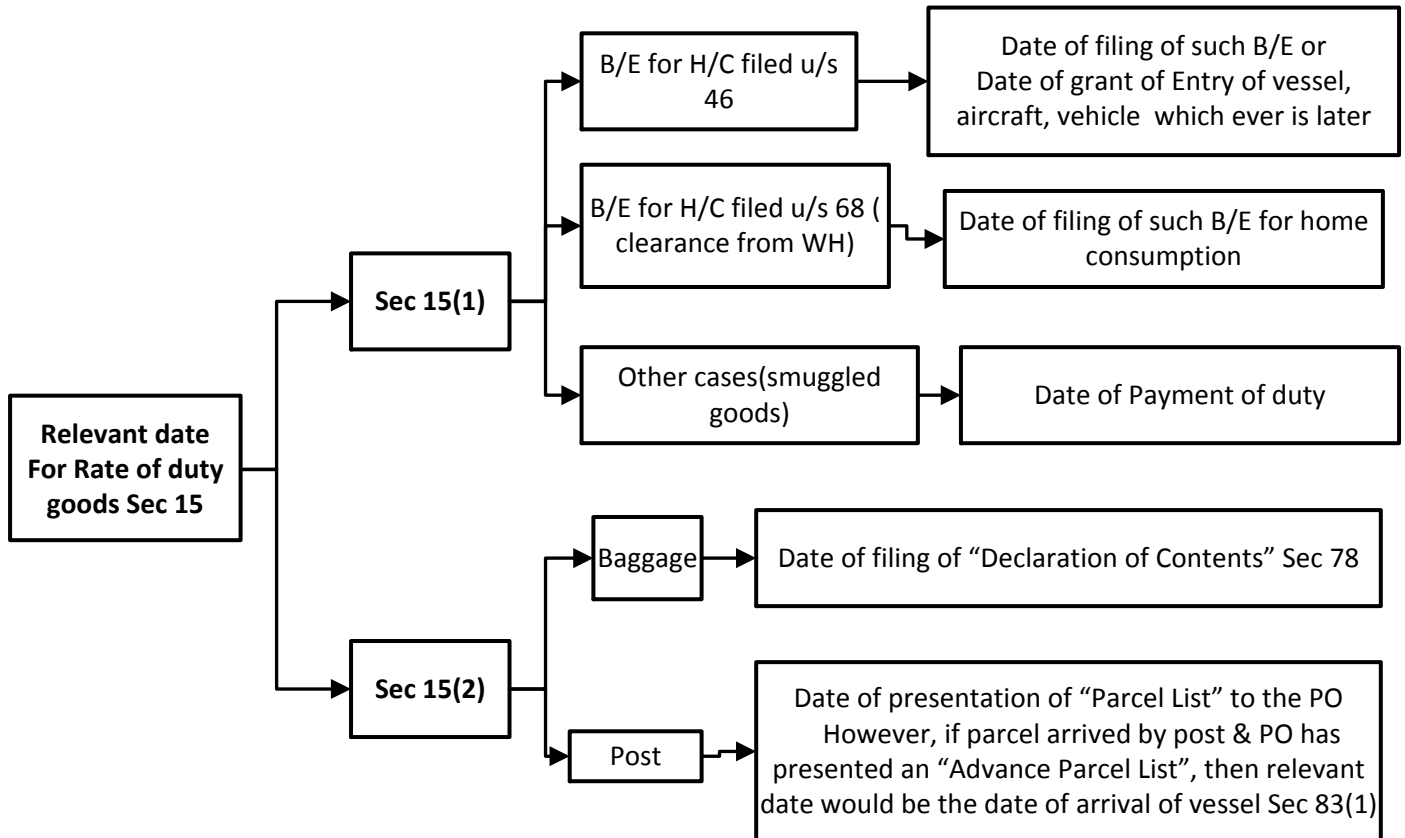
Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2017 Notification No. 68/2017 Cus (NT) 30.06.2017 /Circular No. 25/2017 Cus dated 30.06.2017

These rules will apply to an importer, being a manufacturer, who intends to avail the benefit of an exemption notification issued under section 25(1) of the Customs Act, 1962 granting exemption of duty to **imported goods used for the manufacture of any goods or provision of output service**. The new rule has been introduced due to implementation of GST from 01.07.2017.

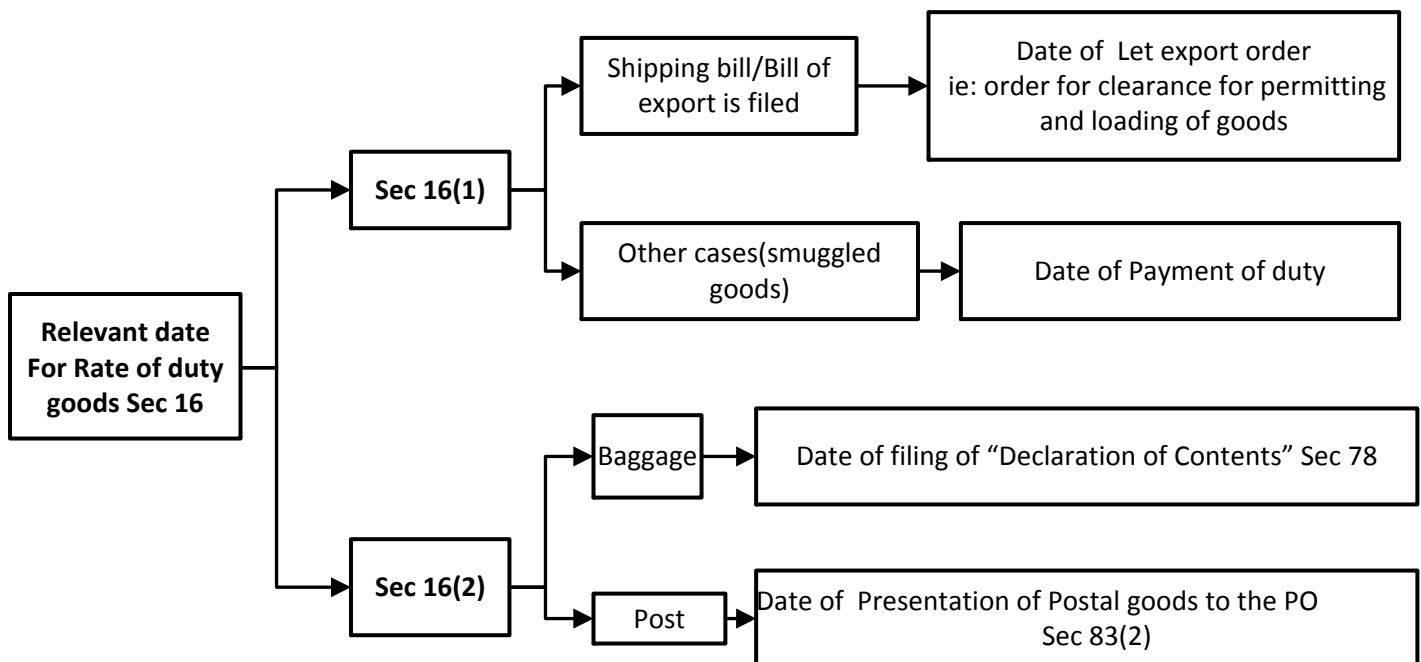


Procedure summary	
1	The manufacturer importer has to make an application giving details of
	Name address Registration No
	Decryptions of inputs, quantity required, nature of process in the factory
	Details of exemption notification proposed to be availed
2	Application to be made in 3 copies 2 sets to jurisdictional AC/DC of Customs and one set to AC/DC of customs port
3	Importer has to execute continuity bond with surety declaring duty interest will be paid
4	Jurisdictional AC/DC counter sign the copy and forward one copy of information to AC/DC of customs
5	Importer should file BOE and give details of factory where the goods are being used.
6	AC/DC of customs will allow the benefit of notification to importer
7	Importer has to inform about the receipt of goods with 2 days. He should maintain records and file quarterly return.
8	The imported goods should be used as per the conditions of notification, failure, bond will be invoked. Duty payable along with interest from the date of importation
9	Re export or clearance of unutilized or defective goods
	Can be re-exported with the Permission of Jurisdictional AC/DC of Customs within 3 months from the date of import. The FOB should not be less than the value of goods at the time of import
	Clear with the Permission of Jurisdictional AC/DC of Customs within 3 months from the date of importation on payment of duty along with interest from the date of importation

Relevant date for Imported Goods



Relevant date for Export Goods



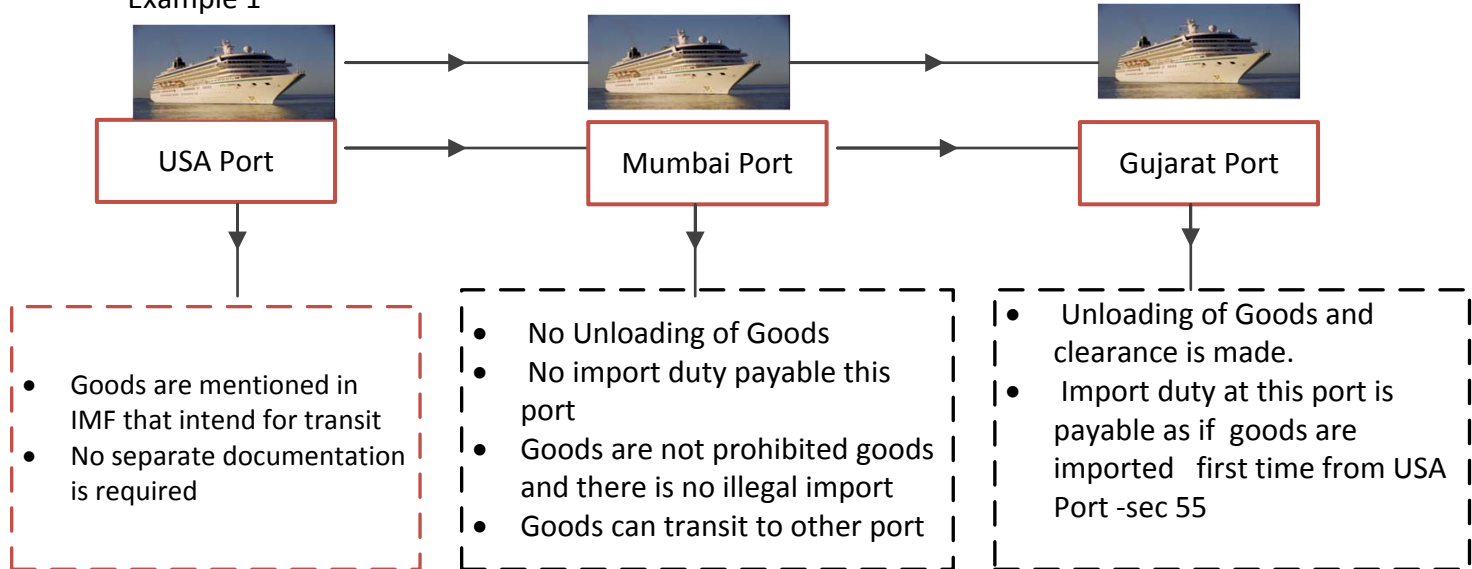
Rate of duty if the goods are not removed from warehouse within the permissible period

- Goods which are not removed within the permissible period are deemed to be improperly removed on the day it should have been removed.
- Thus, duty applicable on such date i.e. last date on which the goods should have been removed is relevant and not the date on which the goods were actually removed.

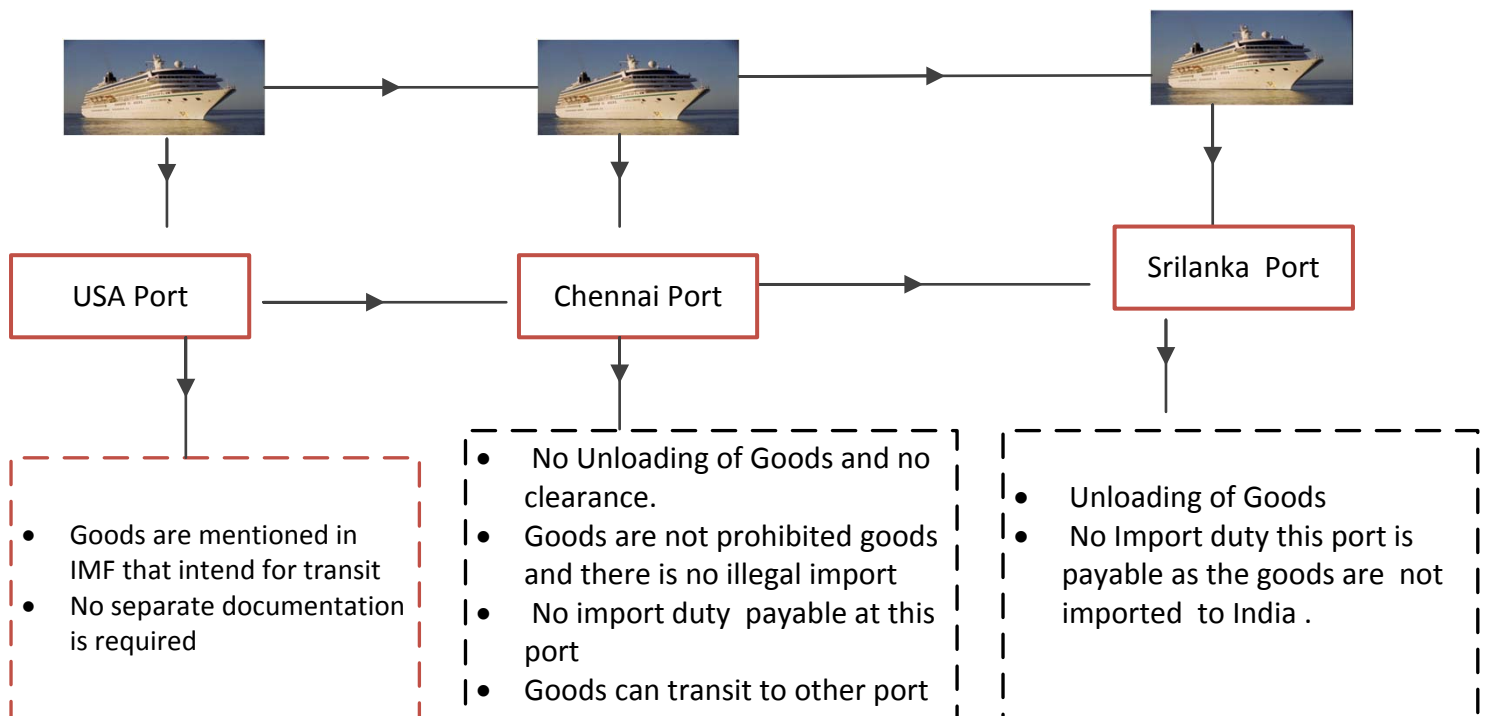
Transit of goods sec 53

- Any vessel, aircraft or Vehicle coming out of India, reaches any port, airport customs station in India, the goods may be allowed to transit any port or airport, customs station in India / Outside India without payment of duty, if such goods are mentioned in IMF for transit

Example 1



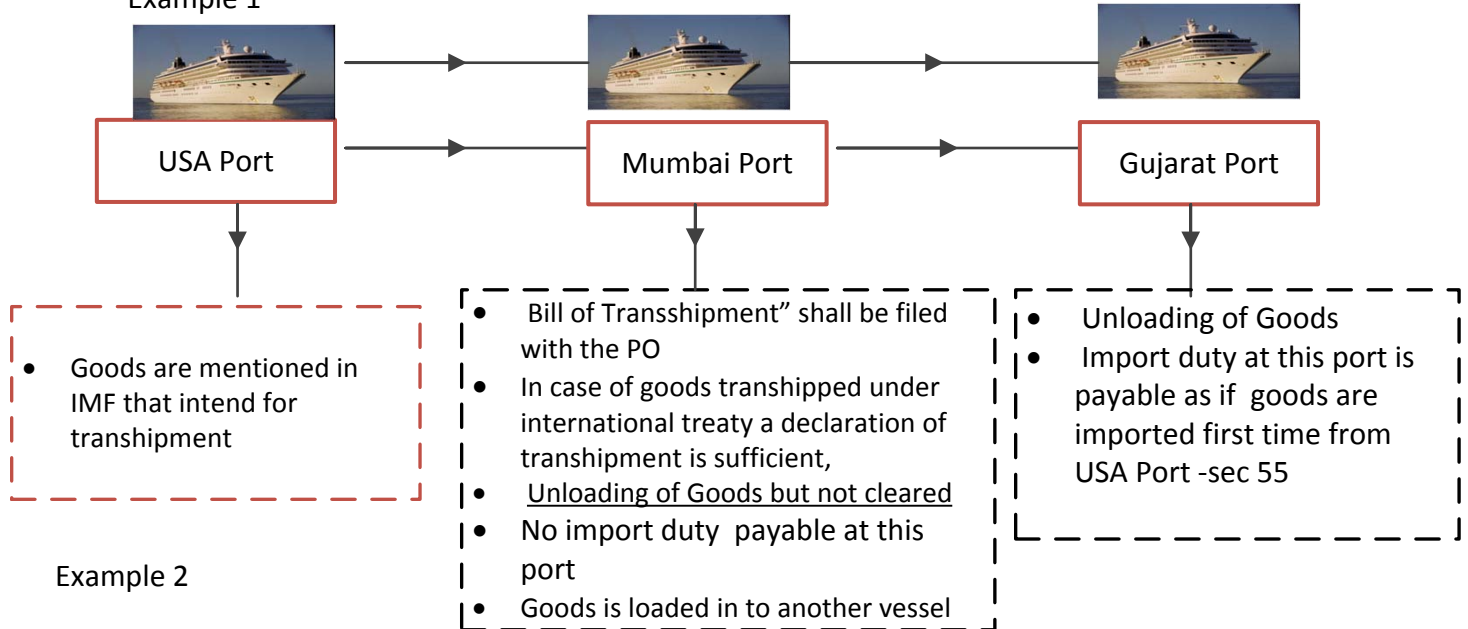
Example 2



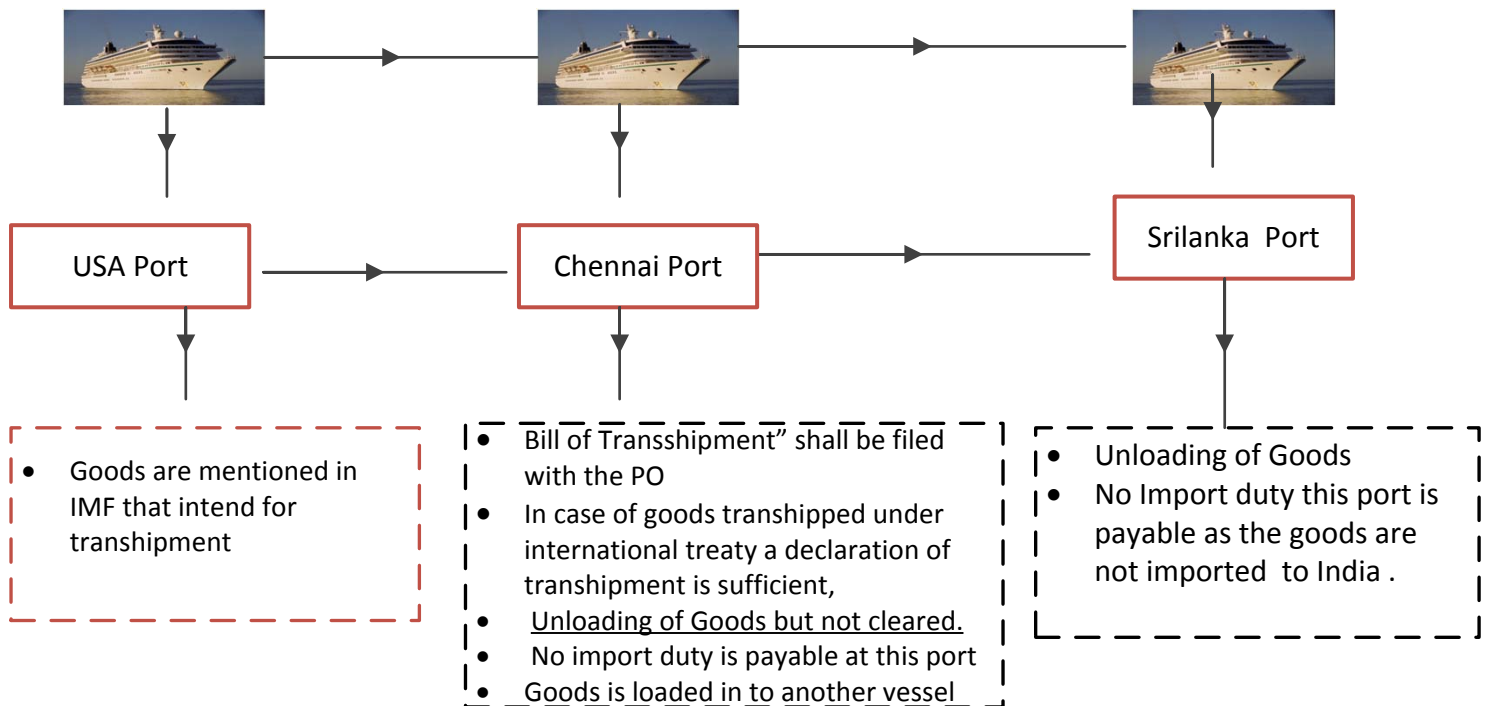
Transshipment of goods sec 54

- Any vessel, aircraft or Vehicle coming out of India, reaches any port, airport customs station in India, the goods may be allowed for transshipment to any other port or airport, customs station in India /Outside India without payment of duty, if such goods are mentioned in IMF, A bill of transshipment is filed.

Example 1



Example 2



Transit VS Transshipment

Transit	Transshipment
- Goods remain in the same conveyance in transit - No fresh documents is need to file at port/air port	- Goods will be loaded in to another Conveyanceremain in the same conveyance in transit - Fresh documents of bill of transshipment is to filed at port/air port

EXPORT PROCEDURES

Procedures for EXPORTER

(Clearance of Export Goods)

- **Sec 50 : Entry of goods for Exportation**
- **Filing of Shipping Bill (SB)** (if Export is in Vessel / Aircraft) or **Bill of Export (BE)** (if Export is in Vehicle)]
- **Prescribed forms of Shipping Bill Color code**
- 1, S B for Export of Goods under claim of Duty Drawback Green
- 2. SB for export of dutiable goods Yellow
- 3. SB for export of duty free goods White
- 4SB for export of duty free goods ex-bond (i.e., direct exportation from the Customs Warehouse) Pink
- 5. SB for export under DEPB (Duty Entitlement Pass Book) Scheme Blue
- **Sec 51: Clearance of goods for Exportation**
- S.B / BE filed
- Inspection of goods is necessary to ensure that prohibited goods are not exported; Goods tally with description and invoice; and Duty drawback, where applicable, is correctly claimed
- PO satisfied that goods are not prohibited goods and assessed duty (if any) and any other charges have been paid
- **Clearance Order** issued : Order permitting clearance and loading of goods onto the conveyance – such order is known as **“Let Export Order” / “Let Ship Order”**)]

Sec 44: -- Sec 50 & 51 are Not Applicable to
a) *Baggage*, b) *Goods imported by post*

Sec 37: Power to Board Conveyance

PO may, if he thinks it necessary, board any conveyance carrying export goods.

Sec 38: Power to require production of documents and ask questions

Any document may be demanded from PIC --- Questions may also be asked by the PO.

Procedures for PIC

(Provisions relating to conveyance carrying Export Goods)

Sec 39 : Export goods not to be loaded on vessel unless “Entry Outward” granted

MASTER OF VESSEL SHALL NOT PERMIT LOADING OF EXPORT GOODS – UNTIL RECEIPT OF ENTRY OUTWARD” FROM THE PO

Exceptions: i) Baggage & ii) Mail Bags]

Sec 40: Export Goods not to be loaded unless duly passed by the PO

PIC of Conveyance shall allow loading of goods only upon submission by the Exporter to him of a duly assessed Shipping Bill // Bill of Export]

Exceptions: i) Baggage & ii) Mail Bags

Loading of Goods

Sec 33 Loading shall be done only at approved places

Sec 34 Loading shall be done under supervision of Customs Officer

Sec 35 Export Goods can be loaded with the help of small boats. If **goods are accompanied with Shipping Bill**, no Boat Note is required. However, if **goods are not accompanied with shipping bill**, boat note is must.]

Sec 36 Loading after Working Hours or on Holiday --- only upon payment of Merchant Overtime Fees)

Sec 41 Delivery by PIC (before departure from India)

- Export Manifest (EGM) in case of Vessel / Aircraft or Export Report (ER) in case of Vehicle)

[EGM/ER has to be filed EGM/ER before Departure]

Sec 42 : Conveyance carrying Export Goods shall leave Customs Station only upon receipt of “written order to that effect” (This order is known as “Departure Permission”)

WAREHOUSING OF IMPORTED GOODS

Sec 2(43):- Warehouse means:

- A Public Warehouse as appointed u/s 57; or
- A private warehouse as licensed u/s 58 or
- a special warehouse licensed under section 58A

Public Warehouse sec 57

Appointed by Principal commissioner/commissioner of customs

Private Warehouse sec 58

licensed by-Principal commissioner of Customs sec 58(1)

special warehouse licensed section 58A

Special warehouse which would remain under physical control of proper office Sec 58A

Principal commissioner/commissioner of customs subject to conditions license Special warehouse, wherein dutiable goods may be deposited.

- The Board will notify the class of goods which will be deposited in the special warehouse.
- Warehouse locked by the proper officer
- No person will enter the warehouse or remove any goods therefrom without the permission of the proper office

Goods can be stored in the special warehouse are
Precious metals/ Supplies as to stores to vessels air crafts/ supplies to Duty free shops/ Supplies to foreign privileged persons as per regulation

Also Known as "Customs Warehouse" or "Bonded Warehouse Or warehousing station"

Only DUTIABLE GOODS can be stored in Customs Warehouse
DUTIABLE GOODS [Sec 2(14)] : Any goods which are chargeable to duty & on which duty has not been paid.

License for all warehouses (Public, Private or special warehouses) cancelled Sec 58 B
Principal commissioner/commissioner of customs may cancel License

- In case of contravention of Act/Rules (Opportunity of Being Heard will be given)
- Pending enquiry License may be suspended, during the period goods not to be allowed to deposit
- Goods already deposited will remain in the warehouse.
- Such suspension of operations will be in addition to any other action that may be taken against the licensee and the goods
- Once the license is cancelled, the warehoused goods will be removed from such warehouse within 7 days from the date order. Proper officer may extend time

WAREHOUSING Procedure

Bill of entry For Warehousing sec 46 To filed by Importer

Ware Housing Bond Sec 59

- a bond in a sum equal to thrice the amount of the duty + Prescribed Security.)
- New bond form was notified till the removal of goods from warehouse
- Declaration that To observe all the provisions To pay All duties, and interest, penalties Rent and others with interest.
- general bond for specified amount for specified period may be allowed by AC/ DC

Warehousing Order sec 60

PO satisfied about Bond under sec 59, pass warehousing order. Then the responsibility lies on importer and warehouse keeper for self removal procedure

New Ware housing licensing, removal and custody Regulations are also notified by notification No 67 to 72/2016 dated 14.05.2016. This are purely for practical purposes

Warehouse goods will be under control of Warehouse Keeper Sec 73 A

All warehoused goods will remain in the custody of warehouse keeper of public, Private and Special warehouse

- ❖ The custody will be till the goods removed from warehouse for home consumption/export or to other warehouse.
- ❖ The responsibilities of the warehouse keeper (licensee) who has custody of the warehoused goods will be such as may be prescribed like maintenance of records etc
- ❖ Where any warehoused goods are removed in contravention of section 71, the licensee shall be liable to pay duty, interest, fine and penalties and any other action

Warehousing period and Interest Sec 61

S No	Class of goods	Time which will remain in warehouse
1	Goods for use in any 100% EOU/ EHTP/ STP/ Goods where manufacture or other operations are permitted under section 65	
	Capital goods	Till the clearance of such goods from warehouse
	Other goods	Till the consumption or clearance of such goods
2	Goods other than 1. above	Till the expiry of 1 year from the date of order of depositing goods in warehouse u/s 60
		Extension of time:
		Principal Commissioner/ Commissioner not more than 1 year at a time. The extension may be reduced based on the shelf life of the goods
3	Interest on warehousing Period	
	Goods of S.No .1	NIL
	Goods of S No 2	Rate- 15% Per annum
		Amount for interest- Duty amount
		Period – Above 90 days till the date of payment of duty
		In case of extension of ware housing period, there is no need to pay interest prior to allow extension period. [Circular No. 23/2016 Cus dated 01.06.2016]

However, if no customs duty is payable at the time of clearance of goods from warehouse, no interest is payable. Interest is mere 'accessory' to principal [Pratibha Processors v. UOI 1996 (88) E.L.T. 12 (S.C.)].

Owners right in case of warehouse goods sec 64

- ❖ Inspection of Goods
- ❖ Deal with containers to prevent loss damage, deteriorated goods
- ❖ Sorting of goods
- ❖ Showing them for sale:

Manufacturing operations in case of warehouse goods by owner sec 65

- ❖ With the sanction of the Principal Commissioner/Commissioner *the owner of any warehoused goods may carry on any manufacturing process or other operations in the warehouse in relation to such goods*
- ❖ Conditions: bond, maintaining accounts, if necessary PO may order of special audit

Duty liability on imported goods present in the waste/final product

- If waste is generated when the waste was exported or destroyed, no duty is payable
- If the waste is cleared for home consumption, import duty is payable on the waste as if the waste was imported

- If final product is exported no duty payable
- If Final product is cleared for home consumptions, import duty is payable on the import material present in final product. The rate of duty prevailing on the date of presentation of bill of entry for home consumption will apply. Normally it would not be less than the rate prevalent at the time Classification will be the same as import material, if the material undergoes change they have to be classified with regard to their finished condition
- Relevant date for determination of rate of duty leviable on import material content in the Waste Is date of payment of duty

Exemption from excess duty [Section 66]

- ❖ If any imported materials are used in manufacturing operations in warehouse and the rate of duty leviable on the imported materials exceeds the rate of duty leviable on such goods;
- ❖ CG, if satisfied, that in the interests of the establishment or development of any domestic industry it is necessary to do so may, by notification in the Official Gazette, Exempt the imported materials from the whole or part of the excess rate of duty

CANCELLATION AND RETURN OF THE WAREHOUSING BOND Sec 73

Where whole of the warehoused goods have been cleared, transferred or duly accounted + All AMOUNTS thereon have been paid

- ❖ PO shall cancel Bond (discharged in full)
- ❖ If the importer demands such cancelled bond – it shall be deliver to him

Ware house without Warehousing

If the goods reached the warehouse, without following ALL or ANY of the following conditions, then it is called WAREHOUSING WITHOUT WAREHOUSING

- ❖ Proviso to Sec 46(1): Inability of importer to file any B/E (whether for H/C or for W/Hing) – due to non-availability of full information --- Goods may be allowed to deposited in PUBLIC Warehouse
- ❖ Sec 49: B/E for H/C filed by importer –inability to clear the goods within a reasonable time – Goods may be allowed to be deposited in Warehouse (Public W/H or Private W/H) (Such goods may be dutiable or non-dutiable)
- ❖ Sec 85: B/E filed for Warehousing – Importer submitting a declaration that these are to be supplied as Stores – without payment of duty (i.e., to Foreign Going Vessel/Aircraft or Ship of Indian Navy) --- such stores may be warehoused without assessment of duty thereon (i.e., No Bond Execution).

STORAGE OF IMPORTED GOODS IN WAREHOUSE PENDING CLEARANCE OR REMOVAL [SECTION 49]

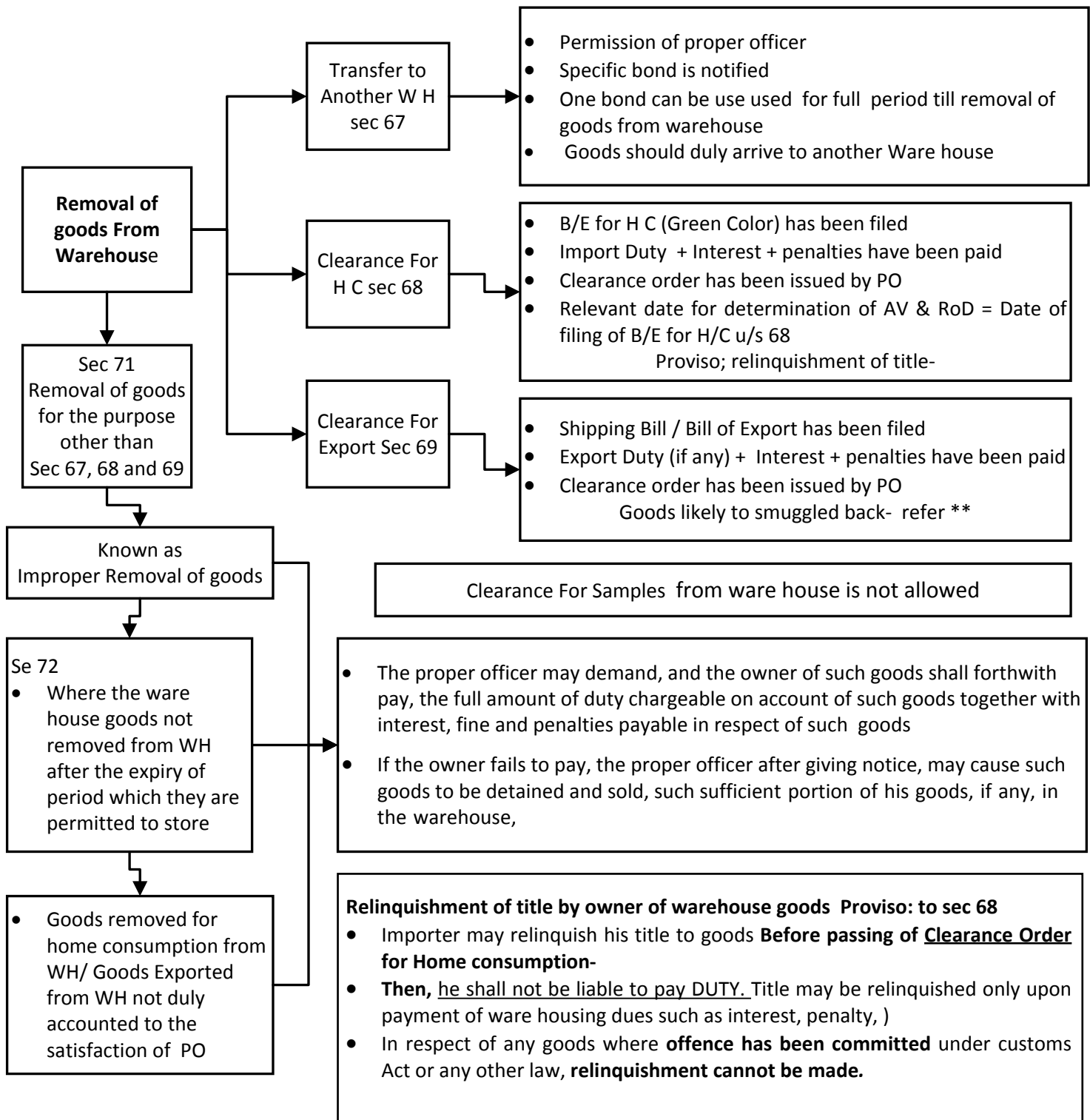
Where the AC/DC of Customs is satisfied on the application of the importer that—

- ❖ the goods cannot be cleared within a reasonable time in the case of imported goods, whether dutiable or not, entered for home consumption.
- ❖ the goods cannot be removed for deposit in a warehouse within a reasonable time in the case of any imported dutiable goods, entered for warehousing.

then in such cases, goods can be stored in a public warehouse for a period not exceeding 30 days.

Such goods deposited under public warehouse will not be covered under Chapter IX of the Act. However, the Principal Commissioner/Commissioner of Customs may extend such period of storage for further 30 days at a time.

Removal of goods From Warehouse Sec 67 to 72



Goods likely to be smuggled back into India sec 69(2)

In case of clearance of goods for export from warehouse

In case of Goods likely to be smuggled back into India – CG may by *Notification in official gazette* direct that:

- ❖ shall not be exported to any place outside India without payment of duty or
- ❖ may be allowed to be so exported subject to such restrictions and conditions as may be specified in the notification.

Allowance in case of volatile goods [Section 70]

- If any warehoused goods at the time of delivery from a warehouse are found to be deficient in quantity on account of natural loss, the AC/DC may remit the duty on such deficiency.
- This section applies to such warehoused goods as notified by the Central Government, having regard to the volatility of the goods and the manner of their storage.
- Notified items include liquid items like petrol, diesel, kerosene, wine ,liquid helium gas, furnace oil and crude stored in caverns

Customs Assessments

Self Assessment Sec 17

- Importer/Exporter file BOR/SB and Self assesses duty.
- stores warehoused without assessment
- The P.O verify the self-assessment
- .the Proper Officer may require to produce documents
- PO re-assess the duty when that the self-assessment is not done correctly,
- Where any re-assessment in verification which is contrary to the self-assessment
- Proper Officer shall pass a speaking order in writing with in 15 days of re assessment of BOE/SB
- When re-assessment has not been done or a speaking order has not been passed on re-assessment, the Proper Officer may audit the assessment of duty at his office or at the premises of the importer or exporter,

Provisional Assessment Sec 18

Reasons

- Importer/Exporter file BOR/SB and unable to Self assesses duty.
- imported goods or export goods to get any chemical or other test; or
- In addition to submitted documents the Proper Officer deems it necessary to make further enquiry

Procedure

- The P.O direct for P.A
- Bond/Guarantee/Cash deposit for differential duty by Importer/Exporter
- Final assessment difference pay/refund . in case of warehouse, bond for difference
- Interest 15 % p.a from first day after duty provisionally assessed.
- Refund interest 6% if not paid with in 6 months of final assessment
- Doctrine of Unjust enrichment applicable

Special cases of assessment and duty rates

Assessment of Set of articles Sec 19

- **Article attracting "Specific Duty"**= Shall be charged to that specific duty only
- **Article attracting "Ad-Valorem Duty"**= Shall be charged to MAXIMUM of the "ad-valorem" rates
- **Article Not liable to duty at all** = Shall be charged to the "Ad-Valorem Rate" as above

Exception

Set of Article = [Main Article Accessories / Spare Parts / Repairs & Maintenance Implements]

- ---- Main Article --- Rate as applicable to it
- --- **Accessory etc.** -- Rate as applicable on the main article
- **Conditions:**
- i) Compulsory Supply;
- ii) Price of Main Article is inclusive of charges for accessories etc.

Any Set of Article – Importer furnishes proper evidence as to the independent values of different articles therein – then, each of the article shall be charged to duty as applicable to it independently

Project Imports for eligible projects
Chapter 98.01
Machinery, Equipment, apparatus

Benefits

- Single Classification of different machineries;
- **Concessional lower rate of duty**

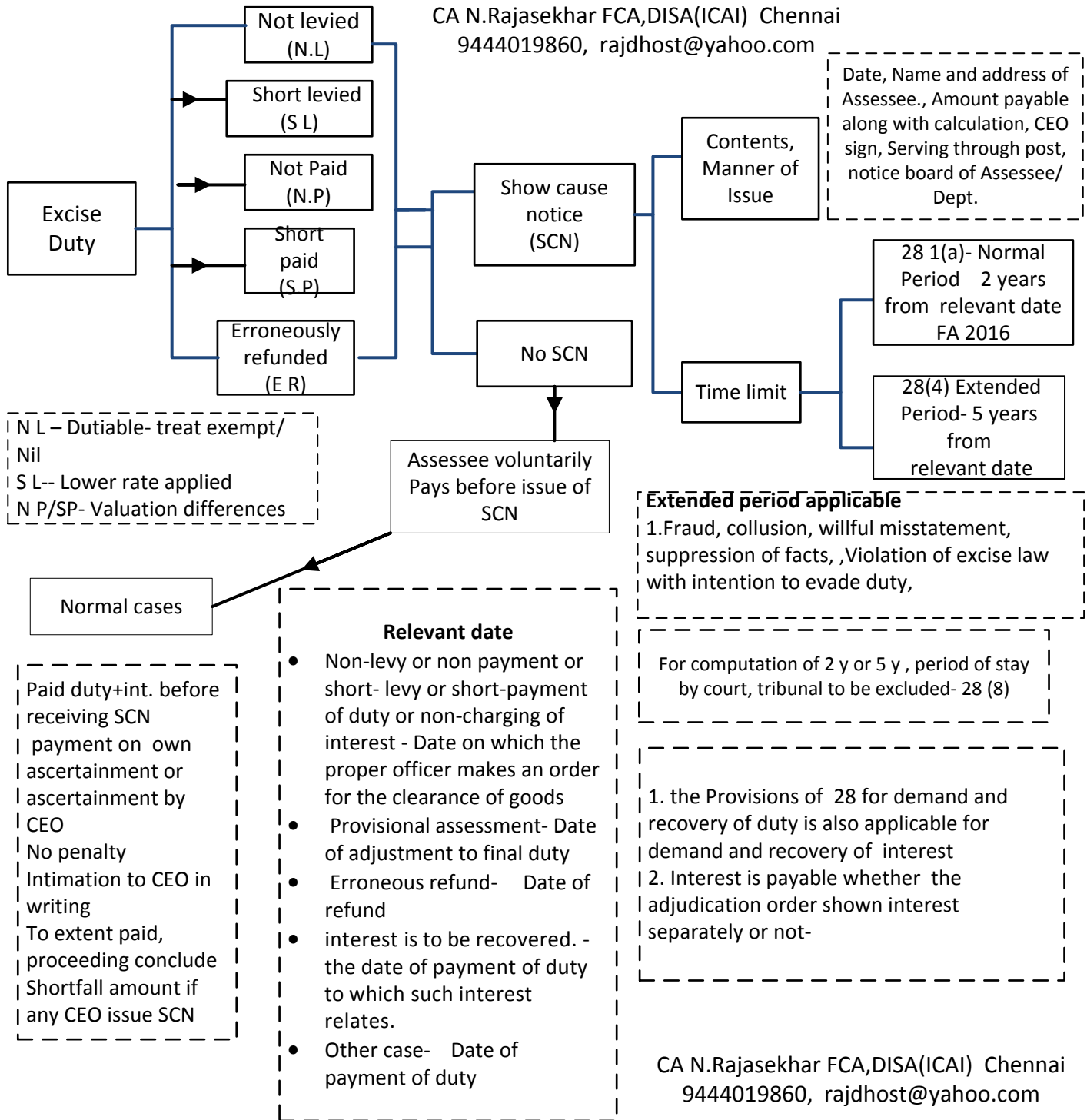
Examples

Power projects
Irrigation projects
Industrial plant
Mining project

Demand and adjudication -1

Demand (Recovery) of customs Duty- Sec 28 of C A

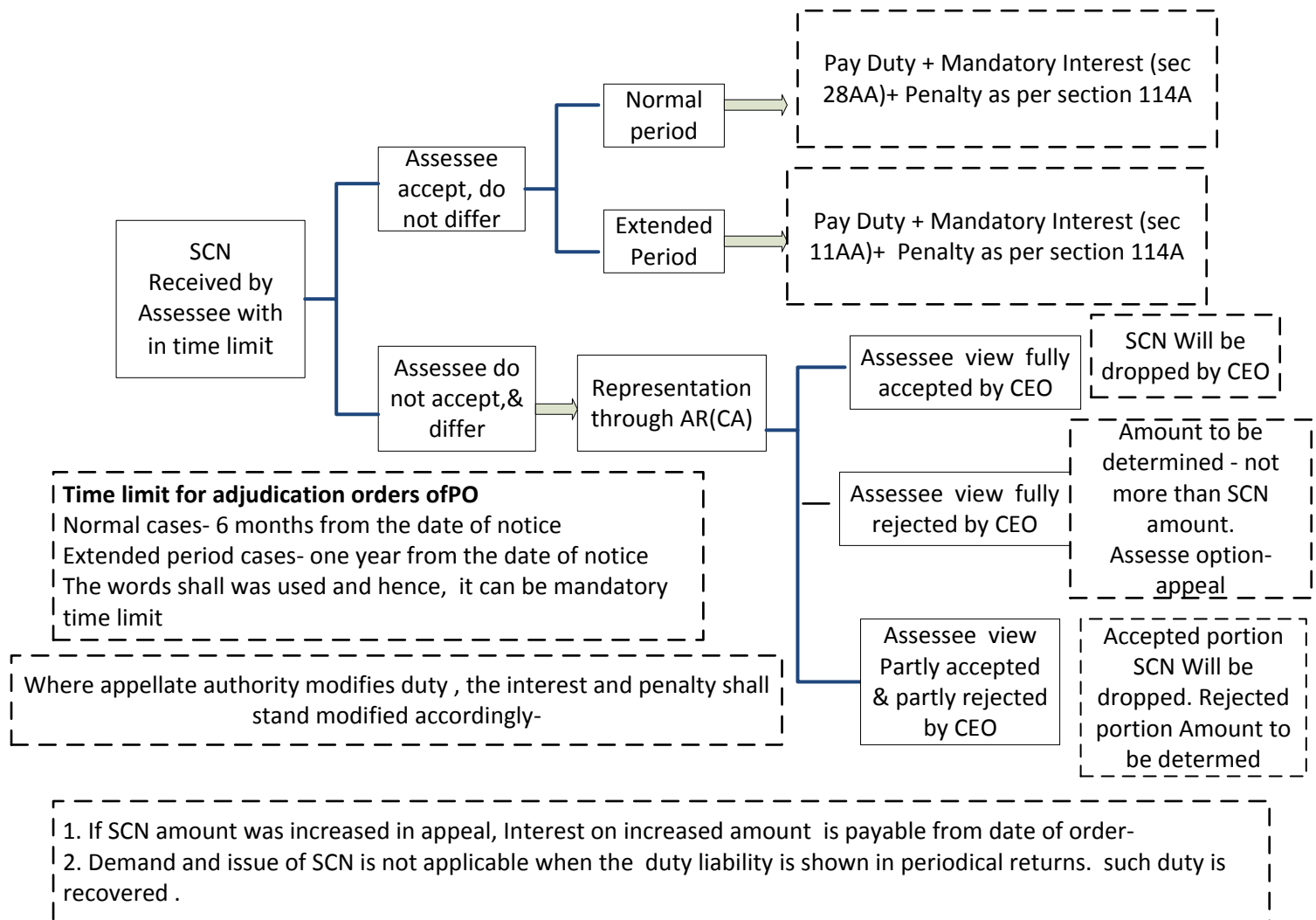
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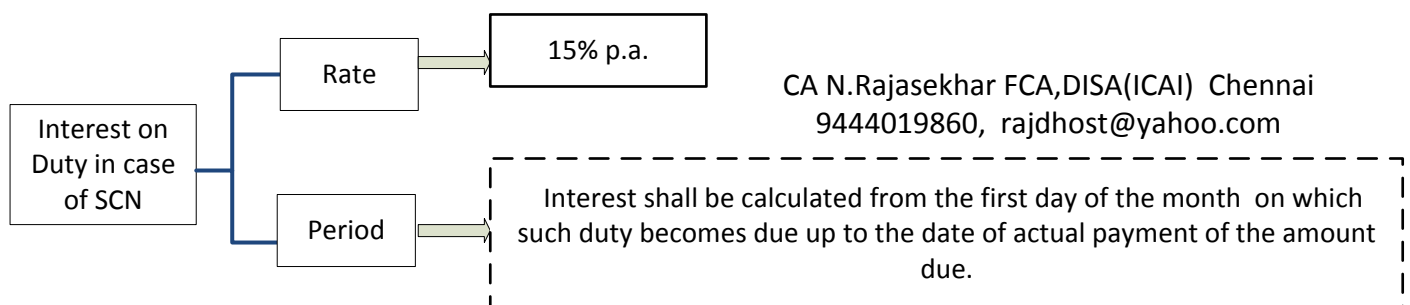
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Demand and adjudication -2

Adjudication orders of PO- Sec 28(8)(9) of C A



Mandatory Interest in case of Recovery of Duty- Sec 28 AA



Demand and adjudication -3

Recovery of Duty-- sec 142 of Customs Act

When assessee fails to pay duty/tax /any sum under act or rules or amount due as per Settlement commission order. It is recovered by any of the modes as below

1	Set off against refund due
2	Attachment of goods belonging to assessee
3	As arrears of land revenue by issuing certificate to district revenue collector (sale of property of assessee)
4	Recovery from surety/ sale of securities in case of security bond
5	Attachment of movable and immovable properties with the permission of PC of CE
6	Recovery from debtor of assessee (garnishee order) /successor in case of sale of business
7	Recovery from partner in case of firm/ Legal heir in case of death of assessee

Power not to recover duty of excise not levied or short Levied -- sec 28 A of Customs Act

Duties not recovered by order of CG in the following cases

1	Misinterpretation or wrong understanding of law both by CEO and assessee
2	Such wrong understanding was occurred in assessment resulting into short levy of duty
3	Wrong understanding was because of bona fide mistake on either side
4	Such mistake should not be because of collusion/fraud cases

If assessee pays duty in spite of CG order he is entitled to refund subject to doctrine of unjust enrichment

Duties of excise collected from the buyer to be deposited with the Central Government – Sec 28B of the Customs Act

1	Every person liable to pay duty shall pay excess collected duty than assessed/ determined to credit of CG. (for example duty collected of nil duty goods/exempted goods/ collected at higher rate)
2	Such payment is made notwithstanding of order of Court or Tribunal.
3	If assessee does not pay SCN will be issued and after representation it is recovered along with interest for delay @15% p.a from 1 st day of month of succeeding month of due date.(Sec 11DD)/Sec 73 C of FA 1994

Provisional attachment of property in certain cases - 28 BA of Customs Act

CEO/Proper officer can provisionally attach the property of assessee to protect the interest of revenue and if it is necessary to do so.

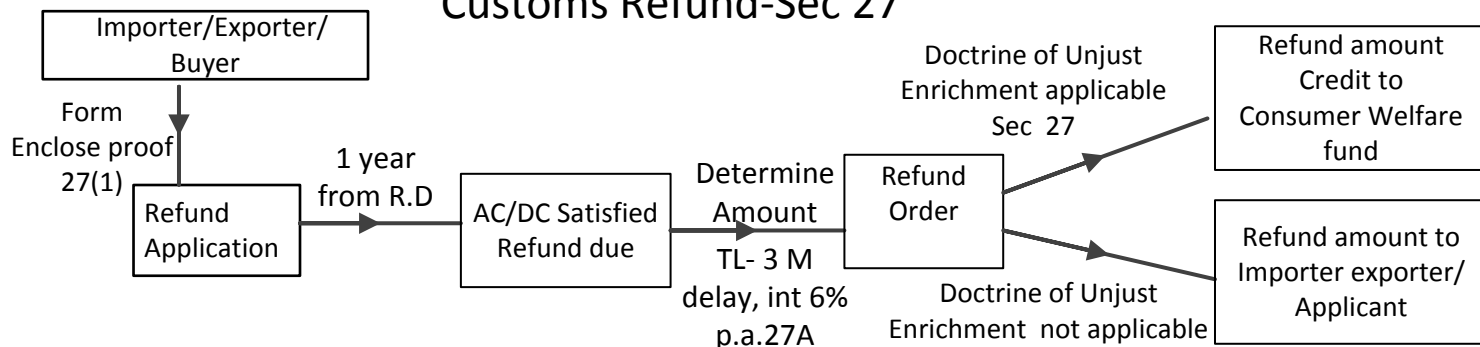
1	Order was made when SCN was issued for recovery of duty
2	Order was made with the previous approval of the Principal commissioner by order in writing.
3	Attachment order will be in force for a period of 6 months from the date of order.
4	PCC of CE has got power to extend time as he thinks fit. Total extension period will be maximum 2 years

Liability under the Central Excise Act will be first charge - Sec 142A of Customs Act.

The liability under the Central Excise Act, /customs Act/FA 1994 such as duty/tax interest penalty and other sum has first charge on the defaulters. The charge will be in the following order

1	Companies Act
2	Recovery of Debt due to Banks and Financial Institutions Act
3	Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act
4	Central Excise Act and Rules/Customs Act and Rules/Finance Act 1994 and ST Rules

Customs Refund-Sec 27



Relevant Date:

- **In case of Export Rebate**
 - Export through aircraft/vessel-Date of leaving aircraft/Vessel Export through vehicle-Date of leaving custom frontier Export through post-Date of dispatch of article
- In Case of Exemption u/s 25 -Date of exemption order
- In Case of Provisional Assessment-Date of final adjustment of duty
- In case of Buyer Date of Purchase of goods
- In case of Order of court/Appellate authority-Date of order
- In any other case-Date of payment of duty

Doctrine of Unjust Enrichment/Refund credit to consumer welfare fund

- It is always assumed unless contrary proved by manufacturer that excise Duty burden normally fully passed on to buyer
- In such cases, refund of excess duty paid to the manufacturer will amount to excess and undeserved profit to him.
- He will get double benefit – One from consumer and again from the Government.
- At the same time, the duty is illegally collected and hence cannot be retained by Government, it will be credited to Consumer welfare fund
- The fund may be used for activities of protection and benefit of consumers.
- Provisions of Unjust enrichment will apply to all types of refund, (Provisional Assessment, Captive consumption Duty paid under protest etc)

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Non Applicability of Doctrine of Unjust enrichment (Refund paid to manufacturer / buyer)

- if the importer has not passed on the incidence of such duty and interest to any other person;
- if imports were made by an individual for his personal use;
- if the buyer who has borne the duty and interest, has not passed on the incidence of such duty and interest to any other person;
- if amount found refundable relates to export duty paid on goods which has returned to exporter as specified in section 26;
- if amount relates to drawback of duty payable under section 74 and 75;
- if the duty or interest was borne by a class of applicants which has been notified for such purpose in the Official Gazette by the Central Government.
- if the duty paid in excess by the importer before an order permitting clearance of goods for home consumption is made where—
 - such excess payment of duty is evident from the bill of entry in the case of self-assessed bill of entry; or
 - the duty actually payable is reflected in the reassessed bill of entry in the case of reassessment.

Customs officers Powers

Section 100 Power to search

- ❖ Any person who has landed from or is about to board, or is on board any vessel within the Indian customs waters;/ Vehicle/foreign going aircraft
- ❖ Power to search suspected persons entering or leaving India
- ❖ any person in a customs area

Section 101

- ❖ Power to search suspected person in certain other cases.
- ❖ Search is conducted by the officer of customs empowered by the commissioner.
 - Search of person for notified goods which are liable for confiscation order by commissioner anywhere in India.
 - Notified goods are gold, diamonds, manufacture of gold and diamonds, watches, any other goods notified by CG

Persons to be searched may require to be taken before gazetted officer of customs or magistrate [Section 102]

- ❖)Person may require to be searched before Gazetted Officer/Magistrate
- ❖ Gazetted Officer/Magistrate may discharge the person/direct the search to be made if he sees no reasonable ground for search,
- ❖ Two or more persons to attend and witness search

Distinction between the provisions of section 100 and section 101

S.No.	Section 100	Section 101
1.	A person can be searched if he has secreted any goods liable to confiscation/any documents relating thereto in his person.	A person can be searched if he has secreted specified goods liable to confiscation/documents relating thereto in his person.
2.	Proper officer is empowered to search the person.	Officer of customs can search the person only if he is empowered in this behalf by general or special order of the Principal Commissioner/ Commissioner of Customs.

Power of Customs Officers to screen or X-ray bodies [Section 103]

If customs officer has reasons to believe that any person coming to India or leaving from India or any person in customs area has secreted inside his body any goods liable to confiscation,

- He can detain and take him to the nearest magistrate.
- If the Magistrate is satisfied that reasonable grounds exist, he can order that the body of such person may be X-rayed.
- A qualified radiologist will take the X-rays and his report may be given to Magistrate. If the report indicates that goods are secreted inside, he may direct that suitable action may be taken to take out the goods as per the advice of a qualified doctor.
- The Magistrate can order that the person may be kept in custody.
- If the person himself admits that the goods are secreted inside his body and voluntarily submit for action to bringing out the goods, X-ray etc. may not be taken.

Power to arrest [Section 104]

An officer of customs who has been empowered by the Commissioner of Customs by general or special order can arrest a person in India or Indian Customs waters whom they have a 'reason to believe' is indulging in evasion of duty or importing prohibited goods or dealing in goods liable to confiscation.

- The officer can arrest him and inform him about the ground of arrest
- The person arrested has to be forwarded to the magistrate
- He must be produced before a magistrate within 24 hours
- The magistrate may grant the bail on bond or refuse the bail and remand him to custody

The threshold limits for the arrest and prosecution was given in the circular 28/2015 dated 23/10/2015

Search of premises [Section 105]

- If AC/DC of customs/an officer of customs empowered by Board has reasons to believe that any goods liable to confiscation or any document or thing are secreted in any place, he can authorize any Customs Officer or he may himself search for such goods, documents or things.
- Search should be as per the provisions of Criminal Procedure Code.
- Report of search is to be submitted to Commissioner of Customs.

Power to stop and inspect conveyance [Section 106]

- Where the Proper Officer has a reason to believe that any aircraft, vehicle or animal in India or
- any vessel in India or within the Indian customs waters has been, is being or is about to be used in the smuggling of any goods or
- in the carriage of any goods which have been smuggled, he may at any time stop any such vehicle, animal or vessel or, in
- the case of an aircraft, compel it to land, and
- the Customs Officer is empowered to stop any aircraft, vessel, vehicle to examine and search the aircraft, vehicle or vessel.
- He can break open any lock of door or package, if key is withheld.
- If the vessel, aircraft etc. does not stop or land after giving signals, it may be chased
- If it refuses to stop after firing a signal, the vehicle may be fired upon.

Power of customs officers to inspect [Section 106A]

- Customs officers have powers to inspect the storage premises notified/specified goods; the inspection can be at any reasonable time, with or without notice.
- The officers can check the records and inspect the goods.
- The person in charge of premises is required to produce accounts records.

Power to call for documents and examine a person [Section 107]

An officer of customs, empowered by Commissioner, during enquiry in connection with smuggled goods, may require any person to produce relevant documents or examine any person acquainted with the facts of the case.

Power to summon [Section 108]

- All gazetted officers of customs have the power to issue summons to any person for inquiry in connection with any provisions under Customs Act.

- He can require a person to produce any document or things of a certain description in the possession or under the control of the person summoned relevant to enquiry and examine a person.
- All persons so summoned shall be bound to attend either in person or by an authorised agent, as such officer may direct; and all persons so summoned shall be bound to state the truth.

OBLIGATION TO FURNISH INFORMATION [SECTION 108A]

Any specified person who is responsible for maintaining record of registration or statement of accounts or holding any other information under any of the Acts which is considered relevant, shall furnish such information to the proper officer in such manner as may be prescribed by rules .

Further, where the proper officer considers that the information furnished is defective, he may intimate the defect to the person who has furnished such information.

The opportunity of rectifying the defect shall be given within a period of 7 days from the date of such intimation or within such further period which may be allowed by the proper officer on an application made in this behalf.

In case the defect is not rectified within the said period of 7 days or, further period, as the case may be, so allowed, then, notwithstanding anything contained in any other provision of this Act, such information shall be deemed as not furnished and the provisions of this Act shall be applicable.

Where a person who is required to furnish information has not furnished the same within the specified time, the proper officer may serve upon him a notice requiring him to furnish such information within a period not exceeding 30 days from the date of service of the notice .

PENALTY FOR FAILURE TO FURNISH INFORMATION RETURN [SECTION 108B]

If the person who is required to furnish information under section 108A fails to do so within the period specified in the notice, the proper officer may direct such person to pay, by way of penalty, a sum of one hundred rupees for each day of the period during which such failure continues.

Power to require production of order permitting clearance of goods imported by land [Section 109]

- Customs officer of land frontier may require any person in possession of any goods, which such officer has reason to believe to have been imported into India by land, to produce the order for permitting clearance of the goods.
- If any imported goods passing from a land frontier to a land customs station by a route appointed under section 7, this power cannot be exercised.

Seizure of goods, documents and things [Section 110]

- During search, if some goods are found, Customs Officers can seize if he has a reason to believe that the goods are liable for confiscation.
- If the goods are bulky, they can be kept in possession of the owner himself.
- A notice is served on him that he should not remove or in any way deal with the goods.

Immediate sale of seized goods [Section 110(1A)]

- If the goods are perishable or hazardous or if storage space is not adequate or if the goods depreciate fast, Customs Officers can dispose of such goods immediately.
- Before disposing them, full inventory will be taken and application will be made by Customs Officer to Magistrate to:

- Certify correctness of inventory
- Certify photographs of goods
- Take samples and certify its correctness.

The goods covered under this section are

- Liquor, photographic films, medicines, wrist watches, electronic goods, gold, silver, dangerous drugs, vehicles etc.
- If the goods are not confiscated or if the confiscation is set aside by appellate authority, sale proceeds must be refunded to the owner of goods.

Return of seized goods within 6 months if no SCN

- If seized goods are felt to be liable for confiscation, a show cause notice has to be served giving him grounds for confiscation,
- Asking his representation and giving him opportunity of personal hearing as per section 124 of Customs Act.
- If no show cause notice is issued within six months of seizure, the goods shall be returned to person from whose possession they were seized.

Seizure of documents [Section 110(4)]

- Documents relevant to proceedings under the Customs Act can also be seized.
- The person from whom the documents are seized is entitled to take copies in the presence of Customs Officer.

Provisional release of goods, documents and things seized pending adjudication [Section 110A]

- Any goods, documents or things seized under section 110 may, pending the order of the adjudicating authority, be released to the owner on taking a bond from him in the proper form with such security and conditions as the adjudicating authority may require.

Vexatious search/arrest by customs officer [Section 136]

- Vexatious search means searching a person or place/arresting a person without any 'reason to believe'.
- Officer is punishable with imprisonment up to six months or fine up to Rs. 1,000 or both.
- This punishment can be imposed only by Court of Law.

Power to take samples [Section 144]

- The proper officer may, on the entry or clearance of any goods or at any time while such goods are being passed through the customs area, take samples of such goods in the presence of the owner thereof, for:
 - examination or testing or,
 - ascertaining the value thereof, or
 - any other purposes of this Act.
- Samples may be taken on the entry, or clearance of any goods or at any time while such goods are being passed through the customs area.
- After the purpose for which a sample was taken is carried out, such sample shall, if practicable, be restored to the owner, but if the owner fails to take delivery of the sample within 3 months of the date on which the sample was taken, it may be disposed of in such manner as the Commissioner of Customs may direct.
- No duty shall be chargeable on any sample of goods taken under this section that is consumed or destroyed during the course of any test or examination thereof, (Finance Act 2013).

Procedure for sale of goods and application of sale proceeds [Section 150]

- Where any goods not being confiscated goods are to be sold under any provisions of this Act, they shall, after notice to the owner thereof, be sold by public auction or by tender or with the consent of the owner in any other manner.
- The proceeds of any such sale shall be applied
 - firstly to the payment of the expenses of the sale,
 - next to the payment of the freight and other charges, if any, payable in respect of the goods sold to the carrier if notice of such charges has been given to the person having custody of the goods,
 - next to the payment of the duty, if any, on the goods sold,
 - next to the payment of the charges in respect of the goods sold due to the person having the custody of the goods,
 - next to the payment of any amount due from the owner of the goods to the Central Government under the provisions of this Act or any other law relating to Customs,
 - and the balance, if any, shall be paid to the owner of the goods.
- Where it is not possible to pay the balance of sale proceeds, if any, to the owner of the goods within a period of six months from the date of sale of such goods or such further period as the Commissioner of Customs may allow, such balance of sale proceeds shall be paid to the Central Government.

Certain officers required to assist officers of customs [Section 151]

- The following officers are hereby empowered and required to assist officers of customs in the execution of this Act, namely:
 - officers of the Central Excise Department
 - officers of the navy;
 - officers of police;
 - officers of the Central or State Governments employed at any port or airport;
 - such other officers of the Central or State Governments or a local authority as are specified by the Central Government in this behalf by notification in the Official Gazette.

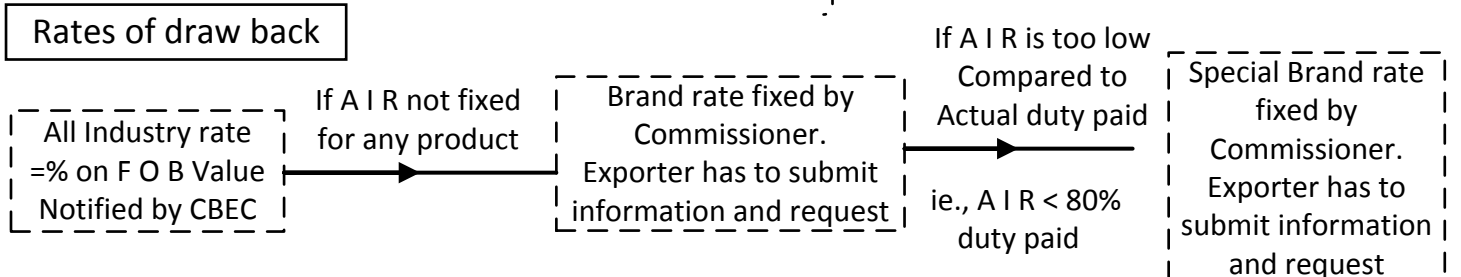
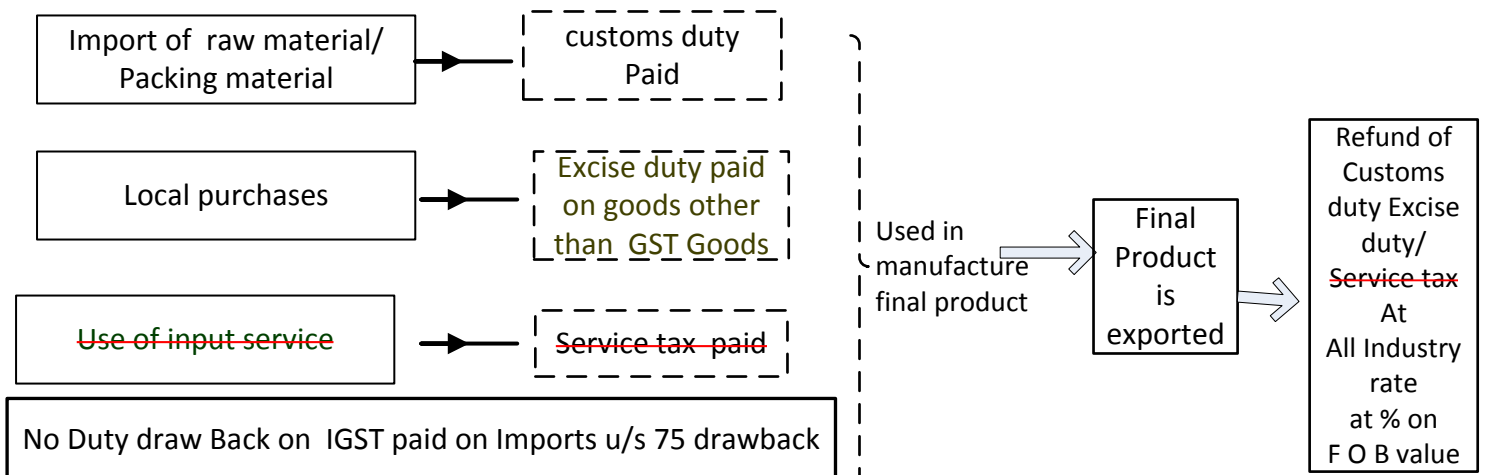
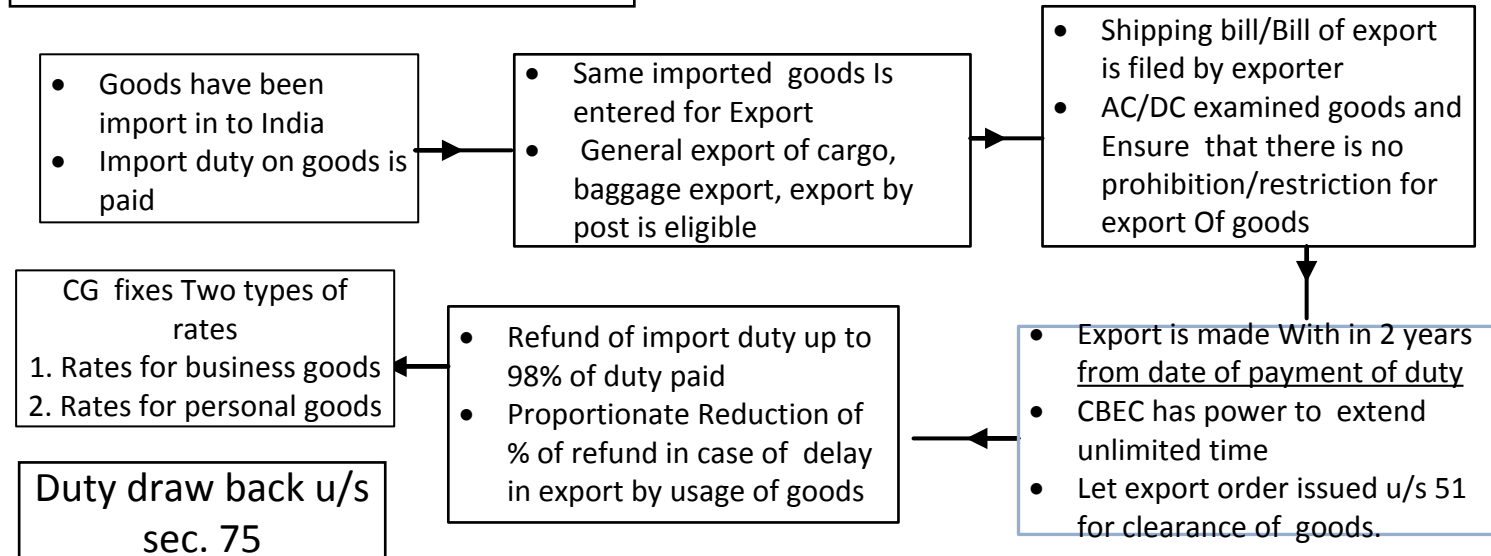
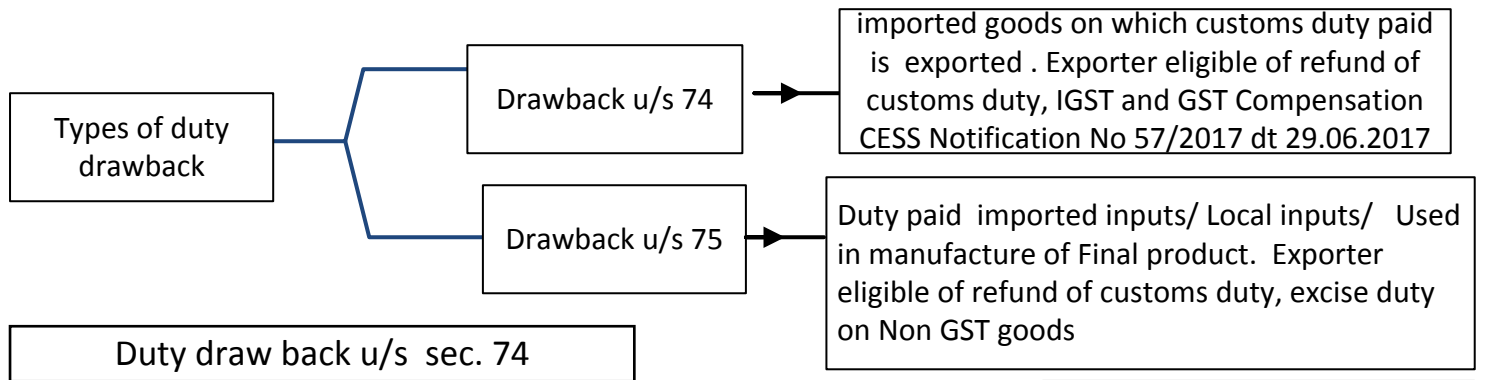
Service of order, decision, etc. Sec 153.

Any order or decision passed or any summons or notice issued under this Act, shall be served -

- a) by tendering the order, decision, summons or notice or sending it by registered post or by such courier as may be approved by the Commissioner of Customs –(Finance Act, 2012 (With effect from 28.05.2012)
- b) if the order, decision, summons or notice cannot be served in the manner provided in clause (a), by affixing it on the notice board of the customs house

Duty Drawback

Duty draw back means refund of customs duty, and excise duty paid on non GST goods/ on inputs, to exporter on export goods



Safeguard duties are rebatable as duty drawback [Circular No. 23/2015 Cus dated 29.09.2015]

- AIR u/75 are not includes safe guard duty paid u/s 8B/8C , Hence exporter can apply for brand rate who pays safe guard duties at the time of importation
- Similarly exporter can claim drawback u/s 74 in who pays safe guard duties at the time of importation

Duty Drawback 2 (details)

Draw back u/s 74 comparison

S No	Situation	DBK u/s 74 (1)	DBK u/s 74 (2)
1	When admissible	Imported goods exported as such (without being used)	Imported goods exported after having being used in India for some period
2	Rates of DBK	98% of the import duty paid at the time of importation	DBK at reduced rate (Notified Rates)
3	Time limit for Export	2 years from date of payment of import duty + Extension by CBEC	Maximum up to 3 Years or 4 years , As the case may be

DBK 74 (2) Rates

DBK 74 (2) Rates				
Business Goods		Personal goods including Motor car		
S No	Usage time	Rate of DBK	Usage time	Rate of DBK : For personal goods including motorcar imported by individual
1	< 3 months	95%	1st year	100% -(4% per quarter of part of quarter)
2	> 3months<= 6 months	85%	2 nd year	100% -(16%+ 3% per quarter of part of quarter)
3	> 6 months<= 9 months	75%	3 rd Year	100% -(28%+ 2.5% per quarter of part of quarter)
4	> 9 months<= 12 months	70%	4 th year	100% -(38%+ 2% per quarter of part of quarter)
5	> 12 months<= 15 months	65%	More than 4 years	NIL. No DBK
6	> 15 months<= 18 months	60%	<u>No DBK for used --- i) Wearing Apparel; ii) Tea; iii) Exposed Cinema Film; iv) Unexposed Photographic films/Paper Plates/X-ray films</u> Note: If the above are not used after import, drawback u/s 74(1) is eligible @ 98%	
7	> 18 months	NIL		

Procedure for claiming drawback U/s 74

Re-Export of Imported Goods (Drawback of Customs Duties) Rules, 1995

Rule 3	Export by Post:
	❖ outer packing shall carry the words "DRAWBACK EXPORT ❖ exporter shall deliver to the DBK claim to competent Postal Authority ❖ date of filing of drawback claim is considered for one month calculation for interest ❖ Deficiencies if any rectify within 15 days. ❖ Deficiency rectification memo acknowledgement date is considered for DBK claim
Rule 4	Export by other than Post:
	❖ Exporter at the time of export declaration to be made in the shipping bill/Bill of export about imported goods, duty paid/ whether used or not after importation. ❖ To furnish documents as proof of import/duty payment & Export invoice packing list etc.,
Rule 5	❖ A Claim for DBK to be filed within 3 months from the date of let export order
(a) Time limit	❖ Application for extension of time can be made by exporter by payment of application fees ❖ Extension of time another 3 months by AC/DC 1% of FOB/Rs. 1000 WEL ❖ Extension of time further 6 months by Com.,/Principal Com., 2% of FOB/Rs. 2000 WEL ❖ Extension of time may be given or refused by writing reasons
(b) Docum ents to file	❖ Triplicate copy of shipping bill, BOE, Import invoice, Export invoice, packing list ❖ Other documents if any mentioned in deficiency memo ❖ Deficiencies if any rectify within 15 days. ❖ Deficiency rectification memo acknowledgement date is considered for DBK claim

Drawback u/s 75

DBK = Refund of [Customs Duty paid on imports + Excise Duty paid on NON GST goods on local Inputs]+ ~~Service Tax paid on Input Service~~ used in manufacture of goods which are exported

Drawback not allowed 75(1)

- ❖ The export value of the finished goods is less than the value of the imported material used in manufacture (i.e. There shall NOT BE (-ve) Value Addition,
- ❖ The (+ve) Value Addition shall exceed the minimum notified % of Value Addition
- ❖ Export sale proceeds are not received in with in time as per FEMA
- ❖ However, Central Government is empowered to prescribe the circumstances under which duty drawback would not be disallowed even though the export remittances are not received within the period allowed under FEMA

More import material used 75 (1A)

- ❖ Where it appears to the Central Government that the quantity of a particular Material imported into India, is more than the total quantity of like material that has been used in the goods manufacture, Central Government, by notification declare that material is deemed to be import material for drawback

Power to frame Drawback Rules 75(2)

CG has power to notify DBK rules for Payment of DBK,/ procedure for claim DBK/ Documents for DBK/DBK disallowance/inspection of factory/recovery of DBK etc. are as follows

Customs, Central Excise Duties and Service Tax (DBK) Rules, 2017 Notification

No. 88/ 2017 Cus (NT) dated 21.09.2017 Effective from 01.10.2017

Rule 3	❖ Drawback will be paid based on the percentage of FOB as per All Industry Rates notified by the CBEC. By considering the following ❖ Fixed considering <u>average quantity and value of each class of inputs</u> imported or manufactured in India. ❖ Average amount of duties paid imported material indigenous material/ waste produced in manufacture/Service tax paid on input service is considered. ❖ These rates are fixed for broad categories of products. The rates include drawback on packing materials. ❖ any other information which the Central Government may consider relevant or useful for the purpose No drawback in certain cases: (i) Packing materials for export of tea, except tea chests. (ii) Goods manufactured out of duty free materials. (iii) Jute batching oil used in manufacture jute yarn, twine etc. (iv) Packing material used for jute yarn, fabrics etc.				
Rules 4	The Central Government will revise these rates and specify the period in which the rates will be in force				
Rule 5	Determination of relevant date for application of amount or rate of DBK i) The Central Government will specify the period of validity for the drawback. (ii) Retrospective effect – from the date of notification The relevant date shall be: <table border="0"> <tr> <td>In case of Goods exported by filing Shipping Bill / Bill of Export</td><td>Date of issuance by “Let Export Order</td></tr> <tr> <td>In case of Goods Exported by Post</td><td>Date of delivery of Export Goods to the Postal Authority</td></tr> </table>	In case of Goods exported by filing Shipping Bill / Bill of Export	Date of issuance by “Let Export Order	In case of Goods Exported by Post	Date of delivery of Export Goods to the Postal Authority
In case of Goods exported by filing Shipping Bill / Bill of Export	Date of issuance by “Let Export Order				
In case of Goods Exported by Post	Date of delivery of Export Goods to the Postal Authority				
Rule 6	Brand rate ❖ Brand rate is fixed if it is not possible to fix All Industry Rate in case of some special products. ie Where no amount or rate of drawback has been determined in respect of any goods, ❖ The manufacturer has to submit an application with all the details to Principal Commissioner of Customs of exporter jurisdiction. ❖ Such application must be made within 3 months from the date of applicability of amount or rate				

	❖ The exporter can also make an application for provisional drawback, pending determination of final rate. He has to execute bond not exceeding full amount of drawback. ❖ The final draw back amount is adjusted against provisional amount released. The excess if any paid shall be refunded by exporter.
Rule 7)	Special brand rate: Cases where amount or rate of drawback determined is low ❖ A particular manufacturer may find that the actual duty paid on inputs is higher than the All Industry Rate fixed for his product. ❖ In such cases, he can apply for fixation of Special Brand Rate, within 3 months from relevant date of applicability of amount to principal commissioner/Commissioner of Customs of his jurisdiction ❖ The conditions of eligibility are that the fixed All Industry Rate should be less than 80% of the duties paid by him. ❖ The manufacturer can also file an application for provisional drawback as per Rule 6
Rule 8]:	❖ Cases where no amount or rate of drawback is to be determined: ❖ No amount or rate of drawback shall be determined in respect of any goods or class of goods under rule 6 or rule 7, as the case may be, if the export value of each of such goods or class of goods in the <u>bill of export or shipping bill is less than the value of the imported materials used in the manufacture of such goods or</u> ❖ not more than such percentage of the value of the imported materials used in the manufacture of such goods or class of goods as the Central Government
Rule 9	The drawback amount or rate determined under rule 3 shall not exceed one third of the market price of the export product.
Rule 10	Any officer of the CG Authorised in this behalf by an AC/DC, may require any manufacturer or exporter of goods or any other person likely to be in possession of the same to furnish such information and to produce such books of account and other documents as are considered necessary by such officer. For the purpose of ❖ determining the class or description of materials or components used in manufacture ❖ verifying the correctness or otherwise of any information/ drawback ❖ obtaining any other information considered useful by PC/C of customs
Rule 11	Access to manufactory: Officer of CG Authorised by AC/DC of customs as the case may be, considers it necessary, inspect the premises of factory, manufacturing process so as to enable materials or components used for the manufacture of such goods, entitlement of the goods for drawback or for a particular amount or rate of drawback
Rule 12	Export by Post ❖ Mention “DBK Export” on outer package ❖ Prepare DBK claim separately ❖ Submit to the postal authorities along with the package ❖ The date of claim of drawback will be the date of filing of to customs by the postal authorities
Rule 13 & 14	Procedure Export other than by Post ❖ Declaration by exporter on shipping bill that all duties paid. Additional declaration in case of brand rates ❖ Submit other documents ARE 1/Insurance certificate/invoice/LC

	❖ Electronic shipping bill in Electronic Data Interchange (EDI) under the claim of drawback or triplicate copy of the shipping bill for export of goods under a claim of drawback shall be deemed to be a claim for drawback filed ❖ If the said claim for drawback is incomplete in any material particulars or is without the documents specified above, shall be returned to the claimant with a deficiency memo by PC of C of customs ❖ Where the exporter resubmits the claim for drawback after complying with the requirements specified in the deficiency memo, the same will be treated as a claim filed
Rule 15	Payment of drawback and interest The drawback under these rules and interest, if any, shall be paid by the proper officer of Customs to the exporter or to the agent specially authorised by the exporter to receive the said amount of drawback and interest. One or more claims can be combined and adjustments of all dues can be made and cheque issued or amount credited to exporter.
Rule 16	Supplementary claim ❖ DBK sanction is found to be less than what the exporter is entitled to ❖ Supplementary claims can be made in Form Annexure III within 3 months from ▪ Date of publication of such rate in case of revised rate granted ▪ Date of communication of the said rate in case of brand rate (rule 6 & 7) ▪ Date of payment of original drawback in other cases.
[Rule 17]	Repayment of erroneous or excess payment of drawback and interest It shall be repaid upon demand by the PO./recovered u/s 142
[Rule 18]:	Recovery of amount of drawback where export proceeds not realised ❖ AC/DC will send notice to exporter to bring evidence of sale proceeds (30 days' time given) ❖ failure to bring the evidence, AC/DC shall pass recovery orders --- exporter r shall pay within next 30 days (<i>Failure will attract recovery Procedures u/s 142</i>) ❖ However, as and when foreign exchange is brought in India --Proof can be submitted and then, recovered DBK shall be repaid to the importer.

Common points for drawback u/s 74 and 75

Eligibility for drawback

The exporter is eligible for drawback in the following situations:

	Situation	Eligibility
1	In case of goods entered for export	Proper Officer has made order of clearance for loading /exportation under section 51
2	In case goods are to be exported as baggage (Not applicable for 75 drawback)	When the owner makes a declaration of its contents to the Proper Officer under section 77
3	In case goods are entered for export by post	The Proper Officer makes an order permitting clearance of the goods for exportation under section 81

Interest for Delay payment of drawback 75 A

- ❖ Failure to pay DBK due to the exporter within 1 Month of filing of DBK Claim
- ❖ Exporter shall be entitled to interest @ 6% p.a. for the period of delay beyond 1 Month
- ❖ DBK granted erroneously to Exporter, SCN served for recovery of such DBK –
- ❖ Exporter shall pay interest @ 15% p.a. from the date the DBK was erroneously granted till the date of actual payment
- ❖ Failure of to pay the demand within 2 Month from date of demand, recovery action shall be initiated

PROHIBITION & REGULATION OF DBK Sec 76

- ❖ No DBK if DBK due is less than Rs., 50/- / Market Price (of Export Goods) is < the DBK Due
- ❖ Goods likely to be smuggled back into India: CG (by Notification -- May
 - Prohibit allowance of DBK on export of such goods; or
 - Impose restrictions and conditions as to allowance of DBK on export of such goods.

Distinction between Drawback u/74 and 75

Situation	<u>DBK u/s 74</u>	<u>DBK u/s 75</u>
When admissible	Imported goods exported as such (without being used) or after use	IG used in manufacture of goods which are exported
Related Rules	Re-export of Imported Goods (DBK of Customs Duties) Rules, 1995	Customs, Central Excise Duties and Service Tax Drawback Rules, 1995
Means of export	i) General Export of Cargo; ii) Baggage Export; iii) Export by Post	i) General Export of Cargo; ii) Baggage Export; iii) Export by Post
Coverage of Duty refund	Customs Duty is only refunded.	Customs, Excise Duty as well as Service Tax are refunded.
Rates of DBK	98% of the import duty paid at the time of importation DBK at reduced rate for used goods	i) AIR (All Industry Rate) --- generally; ii) BR (Brand Rate)—when no AIR is fixed in the DBK Schedule; iii) SBR (Special Brand Rate)--- when fixed AIR < 80% of the actual duties incidence
Time limit for export	2 years + extention	No time limit

BAGGAGE

BAGGAGE Sec 2(3):

It includes – unaccompanied baggage but it doesn't include Motor Vehicle.

Baggage normally means the luggage of a passenger accompanied or unaccompanied,

Baggage comprises of trunks or bags and the personal belongings of the passenger.

The statutory provisions relating to Baggage are covered by sections 77 to 81 of the Customs Act as below

Sec 77	Entry of Baggage/Declaration by Owner of the Baggage ❖ The owner of the baggage has to make a declaration of its contents to the proper officer of customs, for the purpose of clearing (for import/export) it. ❖ This is known as Baggage Declaration Form.
Sec 78	Relevant Date for determination of AV & RoD ❖ Relevant Date = Date of filing of Declaration of its contents ❖ All dutiable Articles <u>when imported as Baggage</u> shall be classifiable into Entry No. 98.03 [they shall be assessed collectively under this Heading --- & not to their individual Heading. The effective rate is 36.05%. This rate is not applicable for cigar tobacco, fire arms in excess of prescribed quantity and goods imported through courier
Sec 79	Bonafide Baggage Exempt from Customs Duty Subject to <u>LIMITS & CONDITIONS</u> as specified in the BAGGAGE RULES, 1998 --- PO will allow clearance of baggage without charging any customs duty as below ❖ Articles in use for minimum period by passenger/crew member the Baggage : Any Quantity (which appears reasonable keeping in mind status of the passenger) ❖ Unused Articles in the Baggage: for passenger/ his family members up to limit ❖ A bonafide gift or souvenir up to limit
Sec 80	Article in the Baggage ---- [Dutiable // Prohibited Article + True Declaration about the article has been made u/s 77] ❖ Passenger may request PO to detain (keep in custody) such article with him for the purpose of returning him said article at the time of his leaving India ❖ If passenger is not able to collect the article at the time of his leaving India, he can claim return of his articles in either of the following modes: ❖ He can authorize any other passenger (who is also leaving India) to collect the detained baggage on his behalf; or ❖ He can make a request to PO to later on send the baggage as cargo consigned in his name.
Sec 81	Regulations in respect of baggage Board may make regulations in the following matters: a) providing for the manner of declaring the contents of any baggage; b) providing for the custody, examination, assessment to duty and clearance of baggage; c) providing for transit or transshipment of baggage from one customs station to another or to a place outside Indi

Valuation of Baggage: there is no separate rules. Price tags, online prices are not relevant.. Value is to be made as per Customs Valuation Rules.

Bonafide Baggage: Baggage declaration form prescribed that 'bona fide baggage' includes - wearing apparel / personal and household effects meant for personal use of passenger or family members travelling with him and not for sale or gift /.Jewellery including articles made wholly or mainly of gold, in reasonable quantity according to status of passenger /Tools of draftsman /Instruments of physician or surgeon.

Import of consumer goods in commercial quantity is not permissible as per Foreign Trade policy and it cannot be treated as 'bona fide baggage'

Baggage Rule 1998

Amended with notification No. 30/2016 Cus (NT) dated 01.03.2016 and
Notification No. 43/2016 Cus (NT) dated 31.03.2016).

New rules are applicable from 01.04.2016

Type of passengers and Classification:

Tourists can be broadly classified as

- a) Indian persons going abroad and coming back
- b) Foreign Tourists visiting India for sightseeing or business purpose.

Accordingly, 'Baggage Rules, 1998' contain different provisions for

- a) Residents from India
- b) Foreigners residing in India
- c) Infants
- d) Tourists visiting India and
- e) Persons transferring their residence

General Free Allowance:

In addition to personal effects (excluding jewellery), a passenger is allowed general free allowance of up to Rs. 50,000/-. The limit for Rs. 50,000/- is reduced up to Rs.15,000/- for various category of persons depending upon different circumstances

Annexure I

Following cannot be accommodated in General free allowance. i.e. these items are dutiable

1. Fire Arms
2. Cartridges of fire arms > 50 units
3. Cigarettes > 100 no
4. Cigar > 25 no.
5. Tobacco > 125 g
6. Alcoholic Liquor > 2 lt
7. Gold or silver, in any form, other than ornaments
8. Flat Panel (LCD/LED/Plasma) Television

Personal effects: Departmental clarification - Following will be covered in 'personal effects'. Only used personal effects are permitted. However, as long as it is not prima facie new goods in their original packings which can be disposed of off hand, it will be permitted. The list as given in MF(DR) circular No. 72/98-Cus dated 24-9-1998 is as follows

- Personal Jewellery
- One camera with film-rolls not exceeding 20
- One video camera/camcorder with accessories and with video cassettes not exceeding 12
- One pair of binoculars
- One portable colour TV (not exceeding 15 cms in size)
- One music system including compact disc player
- One portable typewriter
- One perambulator
- One tent and other camping equipment
- One computer (laptop/note book) [Laptop/note book computer has been exempted from customs duty vide notification No. 11 /2004-Cus dated 8-1-2004]
- One electronic diary
- One portable wireless receiving set (transistor radio)
- Professional equipment, instruments and apparatus of appliances including professional audio/ video equipment's

- Sports equipment such as one fishing outfit, one sporting firearm with 50 cartridges, one non-powered bicycles, one canoe or ranges less than 5 metres long, one pair of skids, two tennis rackets, one golf set (14 pieces with a dozen of golf balls)
- One cell phone

Important Definitions

Resident" means a person holding a valid passport issued under the Passports Act and normally residing in India;

tourist" means a person not normally resident in India, who enters India for a stay of not more than six months in the course of any twelve months' period for legitimate non-immigrant purposes,

For example : such as touring, recreation, sports, health, family reasons, study, religious pilgrimage or business;

"Family" includes all persons who are residing in the same house and form part of the same domestic establishment;

Personal effects" means things required for satisfying daily necessities but does not include Jewellery.

Infant" means a child not more than two years of age

Rule 3: Passengers arriving from countries other than Nepal, Bhutan,

Myanmar

An Indian resident or a foreigner residing in India, Tourist of foreign origin returning from any country other than Nepal, Bhutan, Myanmar shall be allowed clearance free of duty articles in his bona fide baggage as below:

Class of Passenger	Origination Country	Articles allowed free of duty
Indian resident or Foreigner residing in India or Tourist of Indian origin, <u>excluding an infant</u>	Any country other than Nepal, Bhutan or Myanmar	Used personal effects, excluding jewellery, required for satisfying daily necessities of life Articles other than those mentioned in Annex. I up to a value of Rs. 50,000/- if these are carried on the person or in the accompanied baggage of the passenger
Tourist of foreign origin <u>excluding infant</u>	Any country other than Nepal, Bhutan or Myanmar	Used personal effects, excluding jewellery, required for satisfying daily necessities of life Articles other than those mentioned in Annex. I up to a value of Rs. 15000/- if these are carried on the person or in the accompanied baggage of the passenger -

In case of infant only used personal effects excluding Jewellery will be allowed as duty free

Note: Old slabs like age of passenger and duration of stay abroad by passengers was removed from 01.04.2016.

The free allowance under this rule shall not be allowed to be pooled with the free allowance of any other passenger. e.g. husband and wife bringing one item of Rs.1,00,000 will not be permitted duty free.

Rule 4: Passengers arriving from countries Nepal, Bhutan, Myanmar

Class of Passenger	Origination Country	Articles allowed free of duty
Indian resident or Foreigner residing in India or Tourist, excluding an infant	Nepal, Bhutan, Myanmar	Used personal effects, excluding jewellery, required for satisfying daily necessities of life
		Articles other than those mentioned in Annex. I up to a value of Rs. 15,000/- if these are carried on the person or in the accompanied baggage of the passenger

In case of infant only used personal effects excluding Jewellery will be allowed as duty free

In case of arrival by land only used personal effects excluding Jewellery will be allowed as duty free

Note: Old slabs like age of passenger and duration of stay abroad by passengers was removed from 01.04.2016.

The free allowance under this rule shall not be allowed to be pooled with the free allowance of any other passenger. e.g. husband and wife bringing one item of Rs.30,000 will not be permitted duty free.

Rule 5 Jewellery.

A passenger returning to India shall be allowed clearance free of duty Jewellery in his bona fide baggage as below

Type of Passenger	Duration of Stay in abroad	Articles allowed free of duty
Any Passenger coming from Any Country	Over 1 year	Gentleman: Jewellery upto a weight of 20 gms with a value cap of Rs.50,000
		Lady Passenger: Jewellery upto a weight of 40 gms with a value cap of Rs.1,00,000

Rule 7 Currency

The import and export of currency under these rules will be governed in accordance with the provisions of the Foreign Exchange Management (Export and Import of Currency) Regulations, 2015, and the notifications issued thereunder.

Rule 8 Transfer of residence to India

A person who is engaged in profession abroad or transferring his residence to India shall be allowed clearance free of duty, in addition to what he is eligible under rule 3 or rule 4

<u>S NO</u>	<u>Duration of Stay</u>	<u>Articles Allowed free of duty</u>	<u>Condition</u>
<u>1</u>	From 3 months up to 6 months	Used personal and household articles, other than those mentioned in Annexure I or Annexure II but including articles mentioned in Annexure III upto an aggregate value of Rs. 60,000/-	Indian Passenger
<u>2</u>	From 6 months up to 12 months	Used personal and household articles, other than those mentioned in Annexure I or Annexure II but including articles mentioned in Annexure III upto an aggregate value of Rs. 1,00,000/-	Indian Passenger
<u>3</u>	Minimum stay of one year during the preceding two years.	Used personal and household articles, other than those mentioned in Annexure I or Annexure II but including articles mentioned in Annexure III upto an aggregate value of Rs. 2,00,000/-	The Indian passenger should not have availed this concession in the preceding three years.
<u>4</u>	<u>Minimum stay of two years or more.</u>	Used personal and household articles, other than those mentioned in Annexure I or Annexure II but including articles mentioned in Annexure III upto an aggregate value of Rs. 5,00,000/-	(i) Minimum stay of two years abroad, immediately preceding the date of his arrival on transfer of residence; (ii) Total stay in India on short visit during the two preceding years should not exceed six months; and (iii) Passenger has not availed this concession in the preceding three years.
Relaxation for Sl. No. 4 (a) For condition (i), shortfall of upto two months in stay abroad can be condoned by Deputy Commissioner of Customs or Assistant Commissioner of Customs if the early return is on account of - (i) terminal leave or vacation being availed of by the passenger; or (ii) any other special circumstances for reasons to be recorded in writing. (b) For condition (ii), the Principal Commissioner or Commissioner of Customs may condone short visits in excess of six months in special circumstances for reasons to be recorded in writing. (c) For condition (iii)- No relaxation.			

Rule 9. Provisions regarding unaccompanied baggage

- ❖ Provisions of these Rules are also extended to unaccompanied baggage except where they have been specifically excluded.
- ❖ The unaccompanied baggage had been in the possession abroad of the passenger and is dispatched within one month of his arrival in India or within such further period as the AC/DC may allow.
- ❖ The unaccompanied baggage may land in India up to 2 months before the arrival of the passenger or within such period, not exceeding one year, as the AC/DC may allow, for reasons to be recorded, if he is satisfied that the passenger was prevented from arriving in India within the period of two months due to circumstances beyond his control such as sudden illness of the passenger or a member of his family, or natural calamities or disturbed conditions or disruption of the transport or travel arrangements in the country or countries concerned or any other reasons, which necessitated a change in the travel schedule of the passenger.

Rule 10 Members of the crew.

- ❖ These baggage rules are applicable to the members of the crew engaged in foreign going vessels, when they are finally paid off on termination of their engagement.
- ❖ However, a crew member of a vessel and aircraft shall be allowed to bring items like chocolates cheese, cosmetics and other petty gift items for their personal or family use which shall not exceed the value of Rs.1500

Annexure II:

1. Colour Television
2. Video Home Theatre System
3. Dish Washer
4. Domestic Refrigerators of capacity above 300 litres or its equivalent
5. Deep Freezer
6. Video camera or the combination of such video camera with one or more of the following goods viz.
 - (a) Television receiver.
 - (b) Sound recording or reproducing apparatus.
 - (c) Video reproducing apparatus.
7. Cinematographic films of 35 mm and above
8. Gold or silver in any form other than ornaments

Annexure III:

1. Video Cassette Recorder or Video Cassette Player or Video Television Receiver or Video Cassette Disk Player.
2. Digital Video Disc player.
3. Music System.
4. Air-Conditioner.
5. Microwave Oven.
6. Word Processing Machine.
7. Fax Machine.
8. Portable Photocopying Machine.
9. Washing Machine.
10. Electrical or Liquefied Petroleum Gas Cooking Range
11. Personal Computer (Desktop Computer)
12. Laptop Computer (Note book Computer)
13. Domestic Refrigerators of capacity up to 300 litres or its equivalent

Notification No. 31/2016 Cus (NT) 01.03.2016: the baggage declaration will have to be filed only by those passengers who carry dutiable or prohibited goods or have anything to declare.

Notification No. 26/2016 Cus dated 31.03.2016. The rate of duty, on baggage remains at 35%. This rate of duty is not applicable to fire arms, cartridges of fire arms exceeding 50, cigarettes, cigars or tobacco in excess of the quantity prescribed for importation free of duty under the relevant baggage rules and goods imported through a courier service.

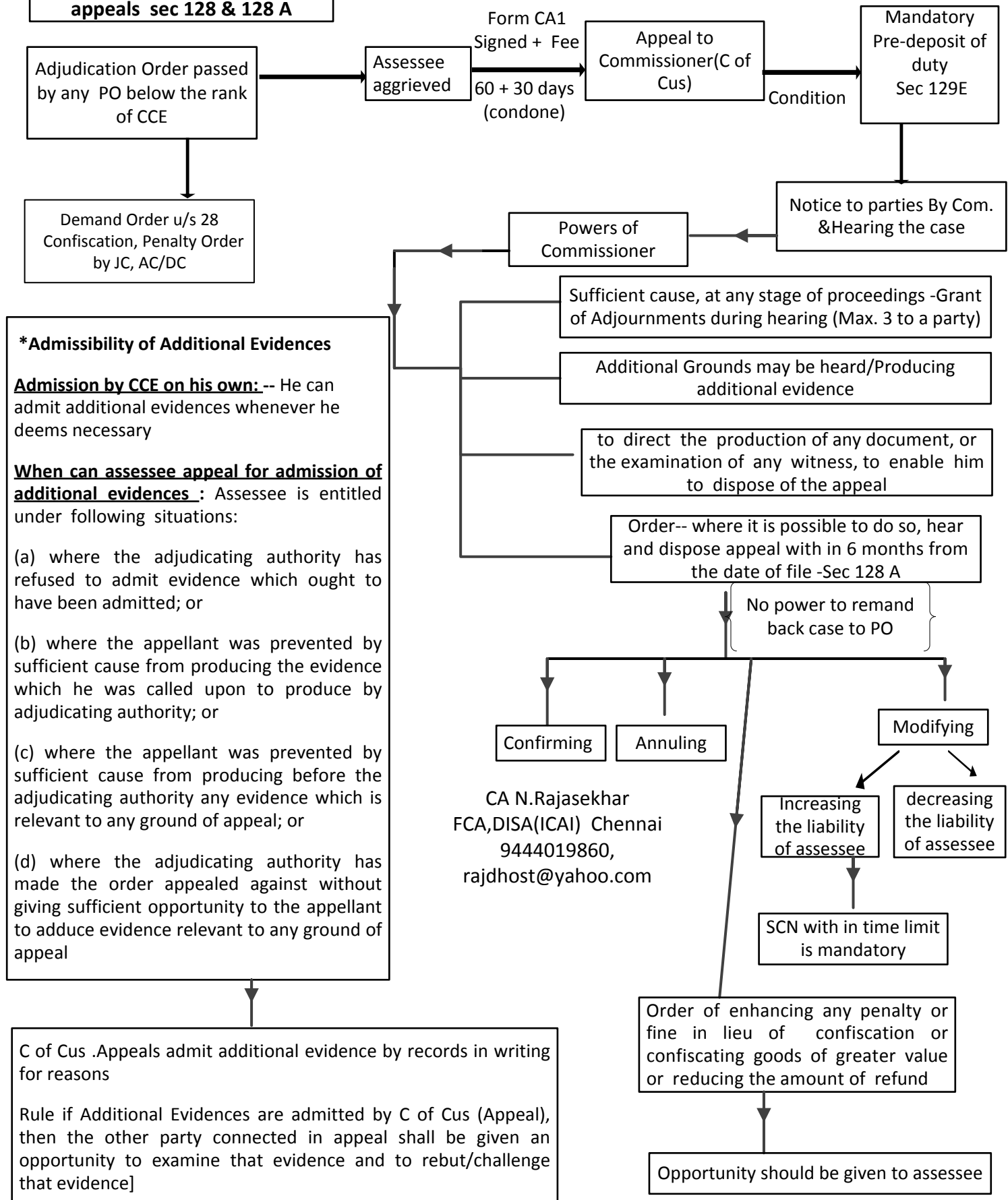
Domestic passengers who board international flights in the domestic leg are not required to file the Customs Baggage Declaration Form. **[Circular No. 08/2016 Cus dated 08.03.2016]**

Comparison between old and new rules

S No	Old rules up to 31.03.2016	New rules from 01.04.2016
1	General free allowance Rs. 45000	General free allowance Rs. 50,000
2	Rule 3 and Rule 4 exemption based on Slabs system for age of passenger/ duration of stay	Rule 3 and Rule 4, Slabs system removed and simplified
3	Rule 4 Special provision for passengers returning from Nepal, Bhutan, Myanmar or China	Rule 4 Special provision for passengers returning from Nepal, Bhutan, Myanmar
4	Rule 5 Indian professionals returning India	Rule 5 Removed
5	Rule 6 for Jewellery	New Rule 5 inserted for Jewellery
6	Rule 7 for Tourists	Rule 7 Removed
7	Rule 8 for transfer of residence	New Rule 6 Inserted for transfer of residence
8	Rule 9. Provisions regarding unaccompanied baggage	New Rule 8 Inserted for Provisions regarding unaccompanied baggage
9	-----	New rule No 7 for currency
10	Rule 10 Members of the crew.	New Rule 9 inserted for Members of the crew.

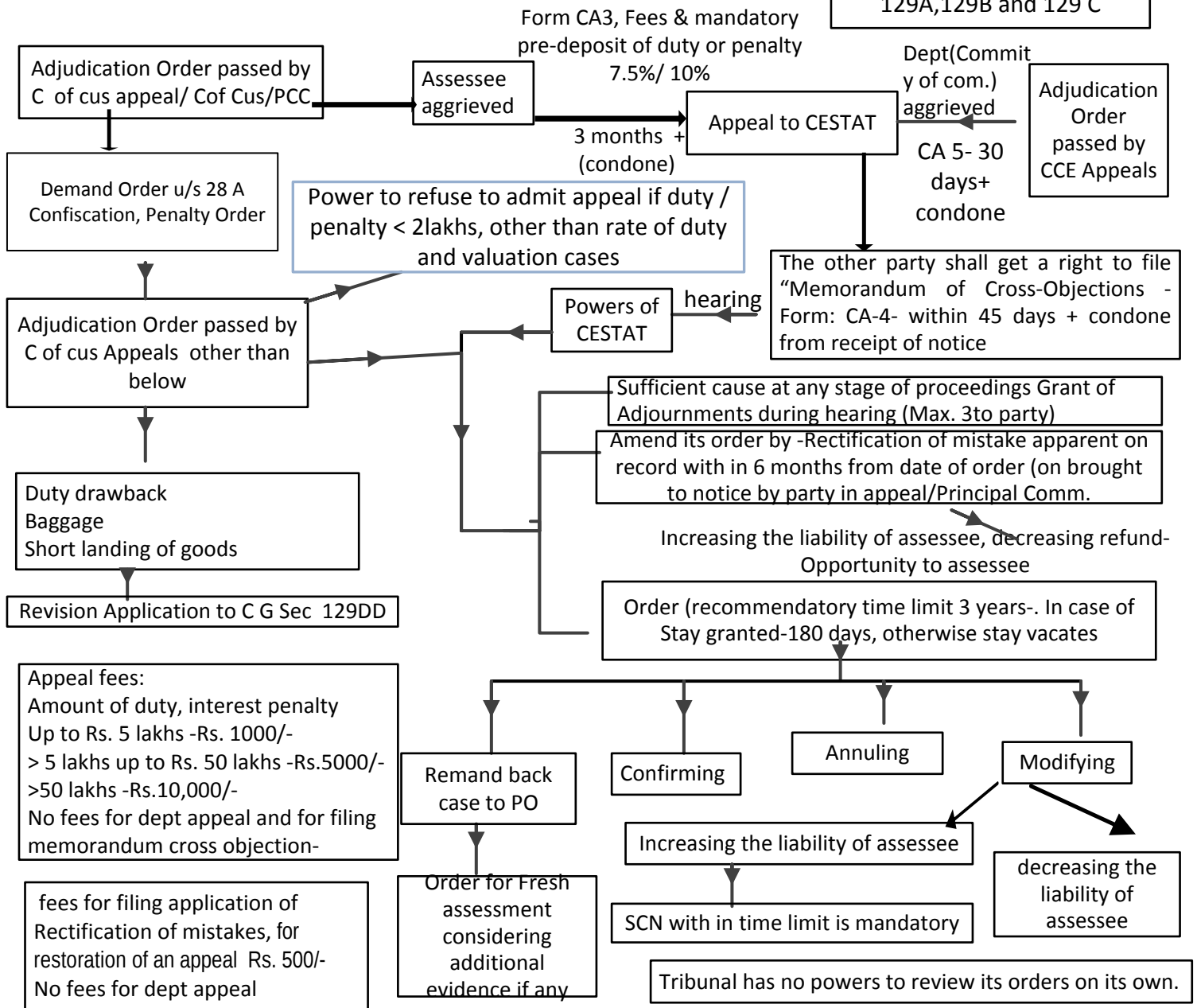
Appeals under Customs

Appeals to Commissioner appeals sec 128 & 128 A



Appeals under Customs- 2

Appeals to Tribunal sec 129A,129B and 129 C



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Other inherent Powers of CESTAT:

- 1.Recall dismissed order, if deposit of duty as ordered paid late
 2. Quash its own order, if found obtained by fraud, disregard of statutory provision, by mistake
 - 3.Correct an error so that justice is done
- The above powers are subject to some limitations.

Committee of Chief commissioners customs(Commt. of CC of Customs) /Commissioners of customs (Commt., of C of Customs)

CBEC Constitue committee consists of two CC of Customs or Commissioner of Customs

Appeal by Commt. of C of Customs

- Commt. of C of CE if its opinion order of Commissioner of appeals is not legal proper direct any CEO to file appeal on his behalf.
- Where Commt. of C of CE difference of opinion in filing of appeal, matter will be refered to Chief commissioner/ Principal chief commissioner of jurisdiction of adjudicating authority
- The Principal Chief Commissioner/ Chief Commissioner shall direct any Central Excise Officer to appeal to the Appellate Tribunal against such order if it is of the opinion that the order passed by the Commissioner (Appeals) is not legal or proper.
- The power of review of order of Commissioner (Appeals) or order of Principal Commissioner/ Commissioner as an adjudicating authority vests with the Committee of Commissioners and Committee of Chief Commissioners respectively and there is no provision for reviewing the same order twice. Sec 129A(2)

Pre-deposit of duty in appeals and refund of such duty

The predeposit of duty in case of appeals is as follows.

Stage of appeal	Appellate Authority	Mandatory Quantum of pre-deposit of duty demanded
First appeal		
(a) Order of PO Below the rank of Commissioner	Commissioner Appeals	7.5% of the duty where only duty or both duty and penalty are in dispute OR 7.5% of the penalty where only penalty is in dispute The amount of pre-deposit shall not exceed `Rs.10 crores.
(b) Order of Commissioner	CESTAT	Example : JC of Excise confirmed duty demand on X ltd Rs. 10 lakhs + Penalty u/s 114A Rs. 10 lakhs + Penalty under CE rules 26 Rs. 3 lakhs Pre deposit = 10 lakhs x 7.5% = Rs.75000/- No predeposit on penalty Rs. 13 lakhs Example 2 AC of Excise confirmed Penalty on X ltd .u/s 11 AC Rs. 10 lakhs + Penalty under CE rules 26 Rs. 5 lakhs Pre deposit = 15 lakhs x 7.5% = Rs.1,12,5000/- Both penalty to be added for redeposit
Second appeal		10% of the duty where only duty or both duty and penalty are in dispute OR 10% of the penalty where only penalty is in dispute The amount of pre-deposit shall not exceed `Rs.10 crores. Example same as above given in the first appeal but if the order issued by Commissioner appeals rate of pre deposit is 10% in case of second appeal
Order of Commissioner Appeals	CESTAT	

Pre-deposit of 7.5%/10% would exclude interest, if any, payable on the duty demanded.

CBEC vide Circular No. 993/17/2014-CX dated 05.1.2015 has clarified that mandatory pre-deposit would be payable in cases of demand of drawback when the appeal is filed before Commissioner (Appeals)

All pending appeals/stay applications filed prior to 06.08.2014 (the date of enactment of the Finance (No. 2) Bill, 2014) shall be governed by the erstwhile old provisions.

Payments made during investigation

• Payment made during the course of investigation or audit, prior to the date on which appeal is filed, to the extent of 7.5% or 10% (subject to a limit of ` 10 crore), will be considered as payments towards pre-deposit for filing the appeals.

Date of filing of appeal will be deemed to be the date of deposit of such payments.

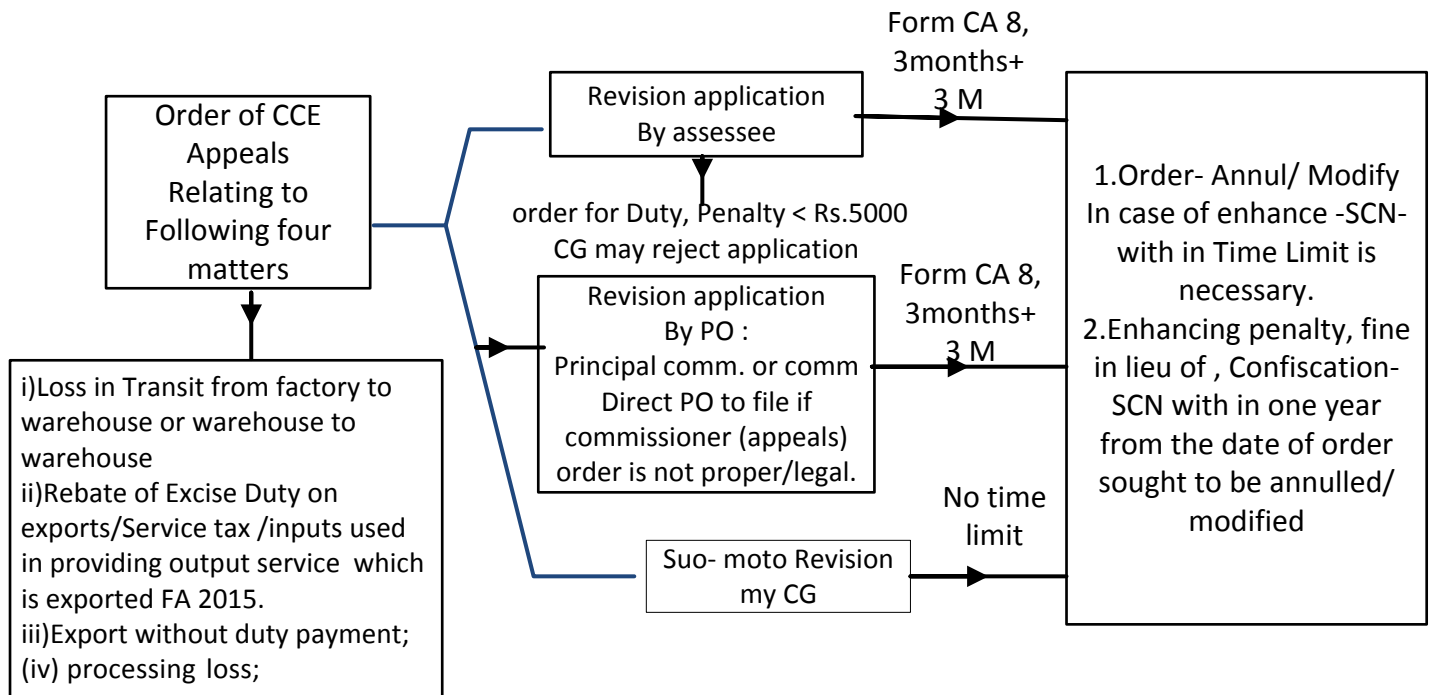
Refund of Pre-Deposit

- Refund of pre-deposit is not refund of duty and hence the same will not be governed by provisions of section 27 of Customs Act, 1962. Therefore, once the appeal is decided in favour of the assessee, he can apply for refund of pre-deposit.
- Refund of pre-deposit along with interest will have to be made within 15 days of receipt of the letter of the appellant seeking refund, irrespective of whether order of the appellate authority is proposed to be challenged by the Department or not.
- Refund of pre-deposit should not be withheld on the ground that Department is proposing to file an appeal or has filed an appeal against the order granting relief to the party.
- In the event of a remand, refund of the pre-deposit shall be payable along with interest.

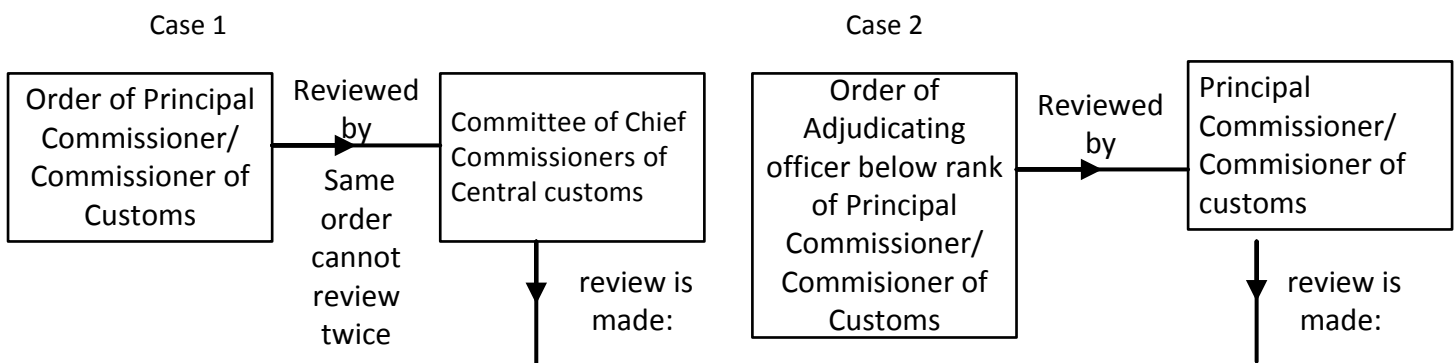
Interest on delayed refund of amount deposited Payment of interest on the refund of such pre-deposit from the date of its payment to the date of refund. Also, the rate of interest would be 6% p.a.

- Interest on delayed refund of pre-deposit made prior to 06.08.2014, the old provision interest @6%p.a after three months from the date of communication of the order will apply

**Revision application to Central Government-- Secretary to Revenue,
Depart of Finance Government of India ,New Delhi Sec 35 EE**



Review by Committee of Chief Commissioners and Principal Commissioner/ Commissioner [Section 129D]



On their own motion, call for and examine the record of any proceeding. Any order passed so as to satisfy itself upon the legality or propriety of the order.

After considering the facts of the order, is of the opinion that the decision or order passed is not legal or proper direct to file appeal to CESTAT/Commissioner (appeals)- Time limit is one month from the date of communication of order. The provisions of appeals of CESTAT/Commissioner (appeals) is applicable.

If there is any difference of opinion among the Committee of Chief Commissioners of Customs, the matter will be referred to Board (CBEC). The board will decide. If order is not legal or proper it may direct Principal Commissioner/Commissioner of customs to file appeal with CESTAT.

Monetary limits for filing appeals by the Department before CESTAT and High Court and Supreme court

Instruction F.No.390/Misc./163/2010 JC dated 17.12.2015]

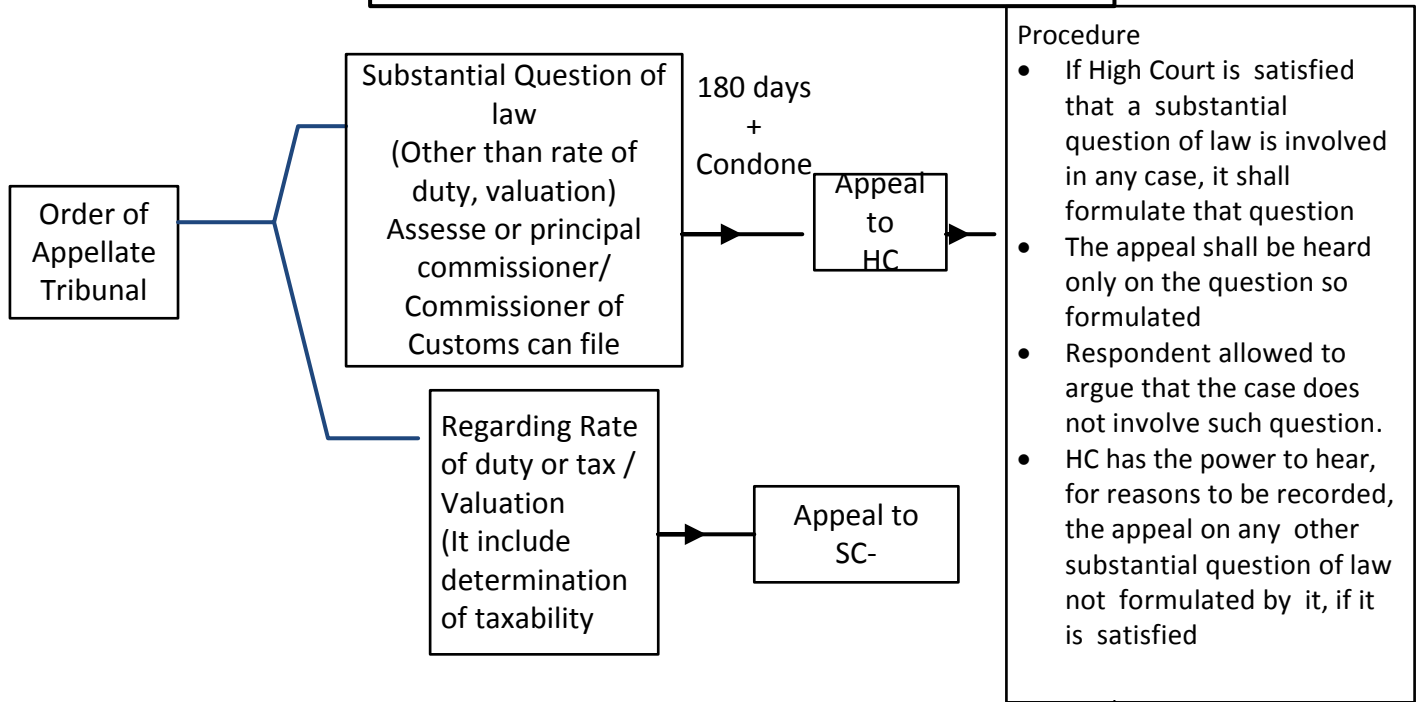
CESTAT- Rs. 10 lakhs,/ High Court Rs. 15 lakhs/ and supreme Court Rs. 25 lakhs

The above limits applicable for disputed duty and not total duty demanded. The limits applicable for refunds also.

The above limits not applicable for

- application filed before the Joint Secretary (Revision Application).
- constitutional validity of the provisions of an Act or Rule is under challenge
- Where Notification/ Instruction/ Order or Circular has been held illegal or ultra vires.
- adverse judgments relating to classification and refunds issues which are of legal and/or recurring nature

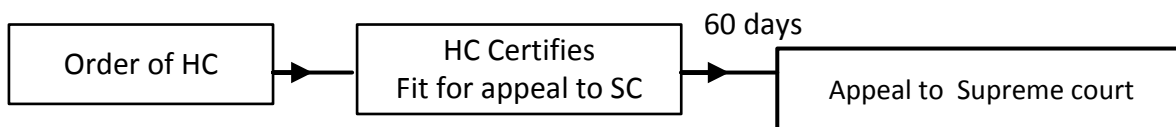
Appeal to High court Sec 130 to 130D



Order of HC-

- The High Court shall decide the question of law so formulated and deliver such judgment thereon containing the grounds on which such decision is founded and may award such cost as it deems fit
- The High Court may determine any issue which has not been determined by the Appellate Tribunal or has been wrongly determined by the Appellate Tribunal, by reason of a decision on a question of law.
- The decision of HC is by majority of judges in a bench. If no majority, matter refer to other judges on the point of difference of opinion. Order is made by majority judges including judges who first heard the case

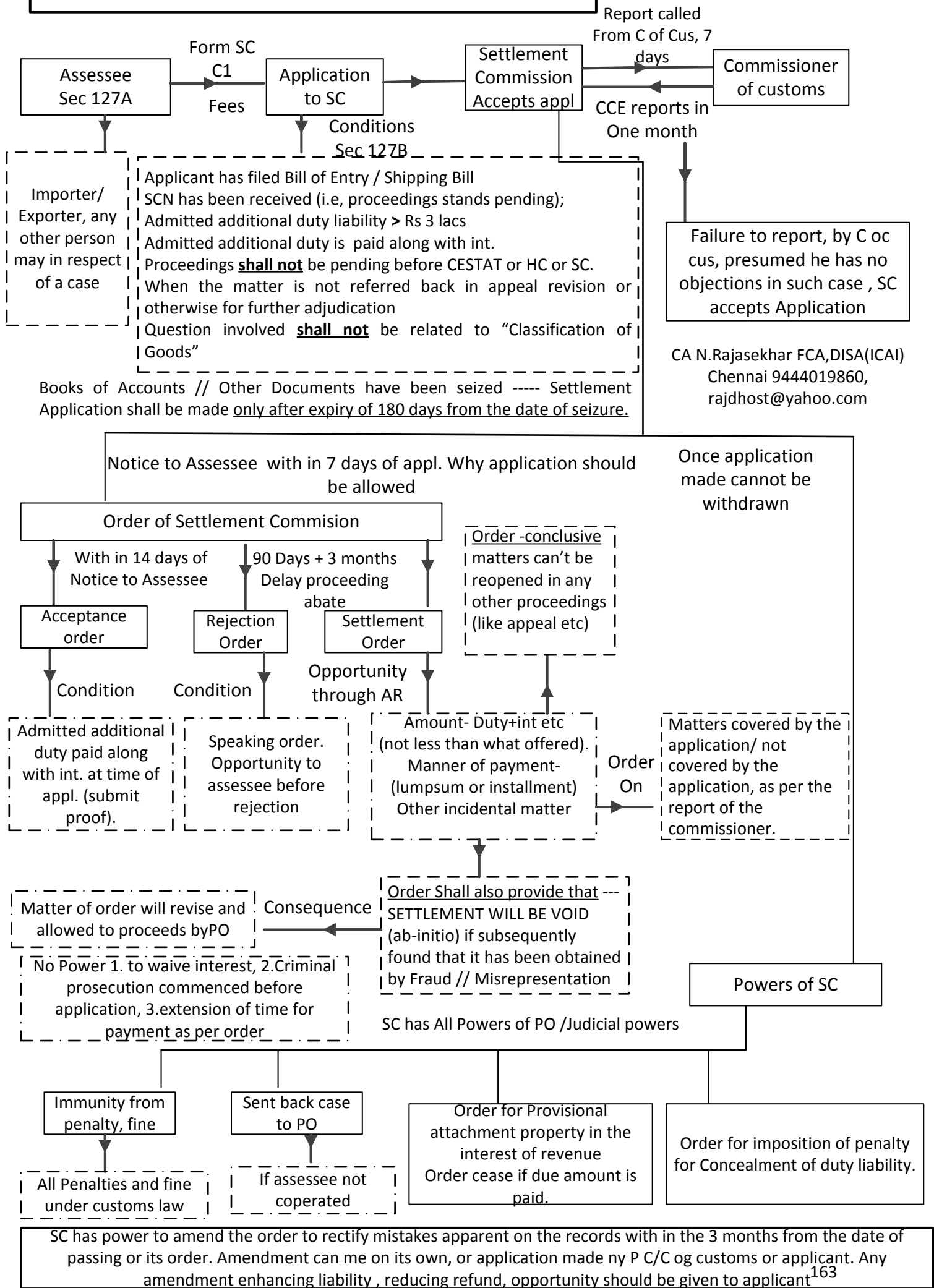
Appeal to Supreme court Sec 35 L



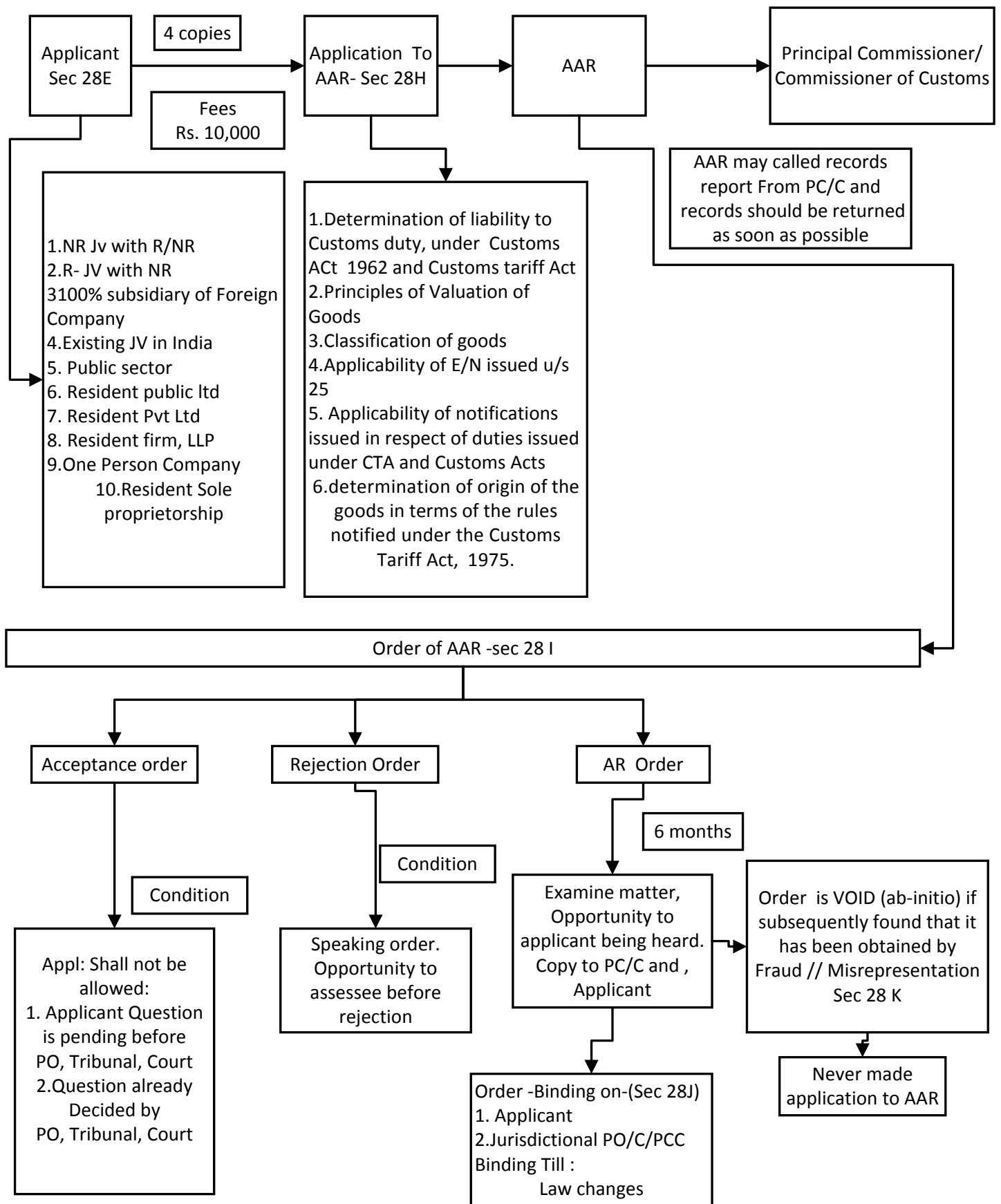
Order of CESTAT Regarding Rate of duty or tax /Valuation
(It include determination of taxability)

- The provisions of the Code of Civil Procedure, relating to appeals to the Supreme Court shall, so far as may be, apply in the case of appeals under section 130E as they apply in the case of appeals from decrees of a High Court
- The costs of the appeal shall be in the discretion of the Supreme Court. Further, where the judgment of the High Court is varied or reversed in the appeal, effect shall be given to the order of the Supreme Court

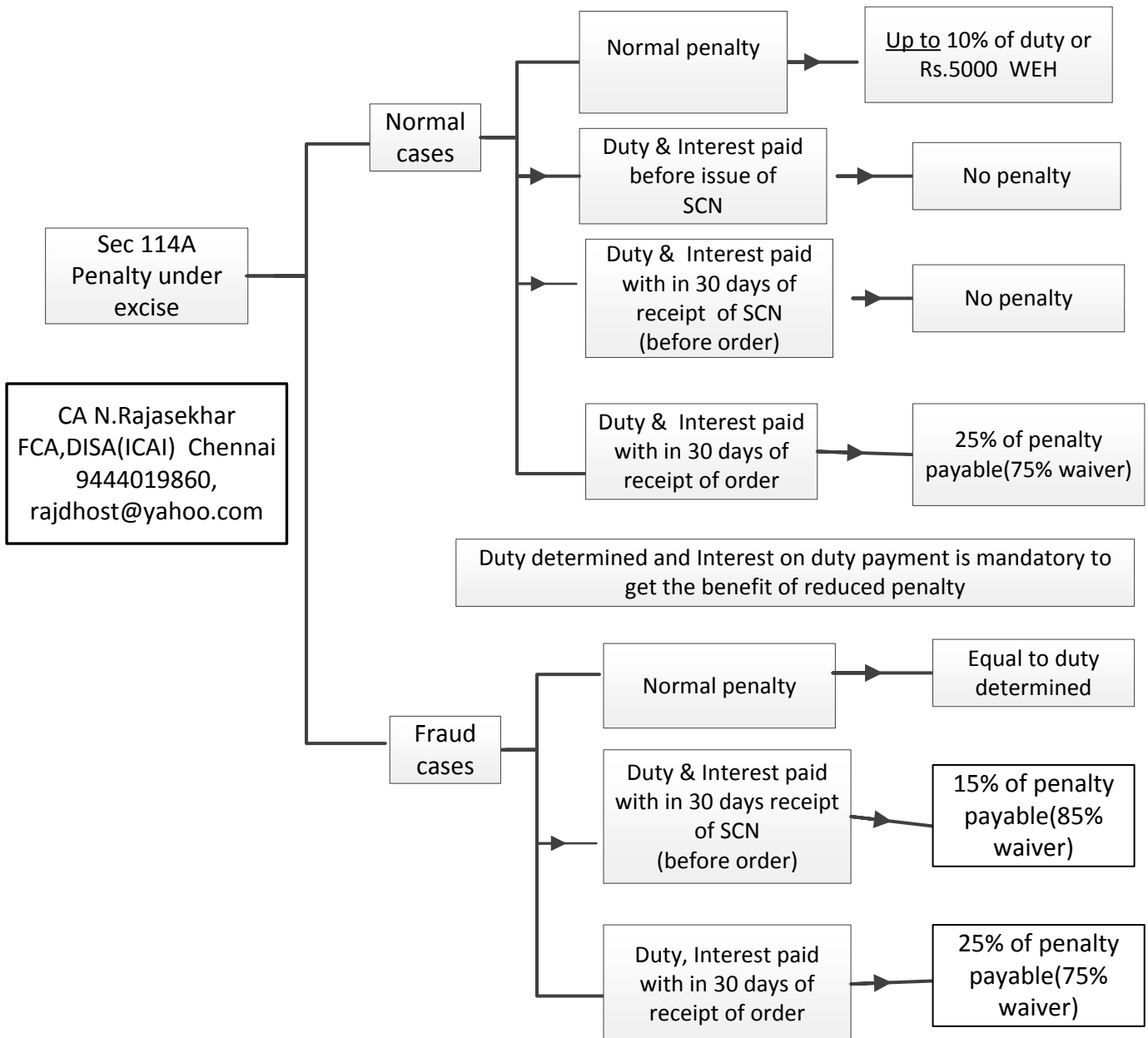
Customs- Settlement Commission Sec 127 A to 127 N



Customs- Authority for Advance Ruling- Sec 28 E to 28M



Customs Mandatory Penalty Under sec 114A



- If duty interest and penalty paid by person as per the above sec 114A the proceedings deemed to be have concluded.
- If any penalty notice issued on other persons also, If the persons pays the penalty the co notices are not required to pay penalty

Customs penalties

Penalties in respect of improper importation of goods, etc. [Section 112]

Imported Goods (A)	Value in (Rs.)	Minimum Penalty in (Rs.) (C)	Maximum Penalty in (Rs.) (B) or (C)
Prohibited Goods	Value of prohibited goods	Rs. 5,000	Whichever is higher
Dutiable goods (Other than prohibited goods)	10% of the Duty sought to be evaded(FA 2015)	Rs. 5,000	Whichever is higher (Penalty will be 25% if duty along with interest is paid within 30 days of the order)
Mis-declaration of value	Value declared - Actual value = Rs. XXXX	Rs. 5,000	Whichever is higher
Prohibited goods plus misdeclaration value	Value of prohibited goods or Value declared – Actual value whichever is higher	Rs. 5,000	Whichever is higher
Dutiable goods plus misdeclaration of value	Duty sought to be evaded or Value declared – Actual value whichever is higher	Rs. 5,000	Whichever is higher

Penalties in respect of attempt of improper exportation of goods, etc. [Section 114]

Exported Goods (A)	Value in (Rs.)	Value/Amount in (Rs.) (C)	Penalty in (Rs.) (B) or (C)
Prohibited Goods	Three times the value of the goods declared by the exporter	Value of prohibited goods	Whichever is higher
Dutiable goods (Other than prohibited goods)	10% of the Duty sought to be evaded(FA 2015)	Rs. 5,000	Whichever is higher (Penalty will be 25% if duty along with interest is paid within 30 days of the order)
Any Other goods	Value of the goods declared by the exporter	Value as determined under the	Whichever is higher

Mandatory Penalty for short-levy or non-levy of duty in certain cases [Section 114A]- similar to Sec 11A C of CEA

Penalty for false declaration [Section 114AA]: Section

- ❖ 114AA lays down that if a person knowingly or intentionally makes/signs or uses, or causes to be made,/signed used,
- ❖ Any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of the Customs Act, shall be liable to a penalty.
- ❖ **Maximum penalty:** Penalty shall not exceed 5 times the value of goods

Section 116: Penalty for not accounting (short landing)

- If the goods were loaded for importation in India, or
- If any goods are trans-shipped, or
- Coastal goods carried in a conveyance

- And if they were not unloaded in India – partly or fully – the person in charge of the carriage explains the reason for deficiency.
- If it is not satisfactorily explained, the AC/DC can impose a penalty on the 'person-in-charge of conveyance' i.e. carrier of goods.

Quantum of penalty

- Not exceeding twice the amount of duty on the value of goods which are not unloaded or the deficient goods.
- In case of coastal goods, amount of export duty that would have been chargeable on the goods

Section 117: Residual Penalty

- General penalty to a person who contravenes any provision of the Act, or abets in contravention and *if no penalty has been prescribed*, the penalty would be up to Rs. 10,000.

Adjudication of confiscation and penalties [Section 122]: Where anything is liable to confiscation or any person is liable to a penalty, such confiscation or penalty may be adjudged as below

S.No	Particulars	Adjudicating officer
1.	Value of goods liable to confiscation ≤ Rs. 50,000	Gazetted Officer of Customs lower in rank than an Assistant/Deputy Commissioner of Customs
2.	Value of goods liable to confiscation ≤ Rs. 5,00,000	Assistant/Deputy Commissioner of Customs
3.	Without limit	Principal Commissioner/Commissioner/Joint Commissioner of Customs

Criminal penalties

The criminal penalties include imprisonment and fine.

S No	Offence	Penalty
1	False declaration, false documents, sec 132	Imprisonment for a term which may extend to 2 years, or with fine, or with both.
2	Obstruction of officer of Customs sec 133	Same as above
3	Refusal to be X-rayed [Section 134	Imprisonment for a term which may extend to six months, or with fine, or with both.

Section 135: Penalty for evasion of duty or prohibitions

Penalty can be levied on a person

- Who is knowingly concerned in mis-declaration of value or in any fraudulent evasion or attempt to evasion of duty or of any prohibition imposed on the imports/export of such goods
- Who attempts for improper import/export/ goods liable for confiscation
- fraudulently avails of or attempts to avail of drawback or any exemption from duty provided under this Act in connection with export of goods,

Quantum of punishment

Offence relating to	Penalty
(a) any goods the market price of which exceeds one crore of rupees; or (b) the evasion or attempted evasion of duty exceeding Rs. 50 lakh (c) fraudulently availing of or attempting to avail of drawback or any exemption from duty referred to in clause exceeds Rs. 50 lakh (d) Prohibited goods in case of goods covered under section 123 (i.e. gold, watches, synthetic yarn and metallised yarn, fabrics of synthetic yarn, electronic calculators, zip fasteners and silver bullion)	Imprisonment up to seven years and fine (without limit) In the absence of special and adequate reasons, the punishment shall not be less than one year
In other cases	Three years or with fine or both
Repeated conviction	The imprisonment punishment can be seven years and fine. In the absence of special and adequate reasons, the punishment shall not be less than one year

Section 135A: Preparation for improper export

Attempting to make exports in contravention of the Customs Act is punishable with imprisonment up to three years or fine or both.

Section 136: Offence by Officers of Customs

- If an Officer of Customs enters into any agreement to do or abstains from doing or permits any act, whereby any fraudulent export is effected, or by which customs duty is evaded or prohibited and goods are allowed to enter India or go out of India, he shall be punishable with imprisonment up to a term of three years, or with fine, or both [Section 136(1)].
- If any customs officer
 - requires a person to be searched for goods without any reason to believe that he has such goods,
 - arrests a person without any reason to believe that he has committed an offence under section 135, or
 - searches or authorises search without any reason to believe that any goods, documents or things are secreted in the place;

He shall be punishable with imprisonment up to 6 months, or fine up to Rs. 1,000, or both [Section 136(2)].

- If an officer of customs discloses any information obtained by him in official capacity, he shall be punishable with imprisonment up to six months or fine up to Rs. 1,000, or both.
- He can disclose the information in discharge of his duties or in compliance with any law in force [Section 136(3)].

In the above cases of section 136, the prosecution can be launched in Court only with the previous sanction of the Central Government in case of prosecution against officer of rank of Assistant Commissioner and above. In lower ranks, previous sanction of Commissioner is required [Section 137(2)]

Section 140: Offence in case of Company

- Penalties can be imposed on a person who was in-charge of, or was responsible to the affairs of the Company/firm such as employee, partner and Director of the company.

The person will be relieved from penalties if he proves that the offence was committed without his knowledge or he had taken due care to prevent the offence

Circulars

Clarification on applicability of pre-deposit provisions under section 129E of the Customs Act, 1962 Recent to first stage appeal in matters relating to drawback

CBEC has clarified that mandatory pre-deposit would be payable in cases of demand of drawback when the appeal is filed before Commissioner (Appeals) as the new section 129E of Customs Act, 1962 would apply to such cases. However, the ambit of section 129E does not extend to appeals under section 129DD before Joint Secretary (Revision Application).

Therefore, while mandatory pre-deposit would be required to be paid in cases of drawback, rebate and baggage at the first stage appeal before Commissioner(Appeals), no pre-deposit would be payable in such cases while filing appeal before the JS(RA). **[Circular No. 993/17/2014-CX dated 05.1.2015]**

Monetary threshold limits enhanced for prosecution and arrest under customs

Prosecution

Circular No. 27/2015 Cus dated 23.10.2015]

Revised guidelines have been issued on prosecution under Customs Act, 1962. The significant aspects of the guidelines are:

- (a) **Person liable to be prosecuted:** As per the provisions of the Customs Act, prosecution may be launched against any person including legal person for offences covered under sections 132, 133, 134, 135, 135A or 136 of the Customs Act, 1962.
- (b) **Threshold limits for launching of prosecution:** CBEC has laid down the following threshold limits for launching prosecution:

S.No	Particulars	Threshold limits
(i)	Baggage and Outright smuggling cases:	
	Cases involving unauthorized importation in baggage/ cases under Transfer of Residence Rules	CIF value of the goods involved is Rs. 20 lakh or
	Outright smuggling of high value goods such as precious metal, restricted items or prohibited items notified under section 11 of the Customs Act, 1962 or goods notified under section 123 of the Act or offence involving foreign currency	Value of offending goods is `Rs.20 lakh or more
(ii)	Appraising Cases/ Commercial Frauds	
	Importation of trade goods involving willful mis-declaration in value/ description of goods/ concealment of restricted goods/ goods notified under section 11 of the Act	CIF value of the offending goods is `Rs.1 crore or more
	Fraudulent availment of drawback or attempt to avail of drawback or any exemption from duty provided under the Customs Act, 1962	Amount of drawback or exemption from duty is Rs.1 crore or more
	Exportation of trade goods involving willful mis-declaration in value /description, concealment of restricted goods or goods notified under section 11 of the Customs Act, 1962	FOB value of the offending goods is `Rs.1 crore or more

- (a) **Exceptions:**

Threshold limit will not apply in following cases:

- (i) In case of habitual offenders or where criminal intent is evident in ingenious way of concealment, where prosecutions can be considered irrespective of the value of goods/currency involved in such professional or habitual offenders, etc. provided the cumulative value of 3 or more such offences in past 5 years from the date of the decision exceeds the threshold limit(s) indicated in above table.
- (ii) In cases involving offences relating to items i.e., fake Indian currency notes (FICN), arms, ammunitions and explosives, antiques, art treasures, wild life items and endangered species of flora and fauna, prosecution would be launched invariably, irrespective of value of offending goods involved.
- (iii) In respect of cases involving non-declaration of foreign currency by foreign nationals and NRIs detected at the time of departure back from India, exceeding the threshold limits of ` 20 lakh, if it is claimed that the currency has been legally acquired and brought into India, prosecution would not be considered as a routine.

Prosecutions will not be launched as a matter of routine and/or in cases of technical nature, where the additional claim for duty is based solely on a difference of interpretation of the law.

- (b) Authority to sanction prosecution:** Prosecution may be launched after due sanction by the Commissioner / Principle Commissioner or Additional Director General / Principle Additional Director General of Revenue Intelligence (collectively known as 'sanctioning authority'). However, in case of habitual offenders and appraising cases/commercial frauds, prior approval of the Chief Commissioner/Principal Chief Commissioner or Director General/Principal Director General of Revenue Intelligence, as the case may be, will be required for launching prosecution.
- (c) Stage for launching of prosecution:** Normally, prosecution may be launched immediately on completion of adjudication proceedings.

Exceptions:

- (iv) Prosecution in respect of cases involving offences relating to items i.e. FICN, arms, ammunitions and explosives, antiques, art treasures, wild life items and endangered species of flora and fauna may preferably be launched immediately after issuance of show cause notice.
- (v) If the party deliberately delays completion of adjudication proceedings, prosecution may be launched even during the pendency of the adjudication proceedings, where offence is grave and qualitative evidences are available [in view of the decision of Supreme Court in case of *Radhe Shyam Kejriwal 2011 (266) ELT 294**].

Circular No. 27/2015 Cus dated 23.10.2015]

Arrest

Threshold limits for arrest are also the same as mentioned in case of initiating prosecution. It has been clarified that powers of arrest should be exercised in exceptional situation. However, such threshold limit would not apply in case of offences relating to FICN, arms, ammunitions and explosives, antiques, art treasures, wild life items and endangered species of flora and fauna. In such cases, arrest, if required on the basis of facts and circumstances of the case, may be considered irrespective of value of offending goods involved.

Stage for launching of prosecution: Normally, prosecution may be launched immediately on completion of adjudication proceedings.

If the party deliberately delays completion of adjudication proceedings, prosecution may be launched even during the pendency of the adjudication proceedings, where offence is grave and qualitative evidences are available [in view of the decision of Supreme Court in case of *Radhe Shyam Kejriwal 2011(266)ELT [Circular No.1009/16/2015 CX dated 23.10.2015]*

The Supreme Court of India in the case of *Radhe Shyam Kejriwal 2011 (266) ELT 294 (SC)* had, *inter alia*, observed that

- (i) adjudication proceedings and criminal proceedings can be launched simultaneously;
- (ii) decision in adjudication proceedings is not necessary before initiating criminal prosecution;
- (iii) adjudication proceedings and criminal proceedings are independent of each other in nature and
- (iv) the findings against the person facing prosecution in the adjudication proceedings is not binding on the proceeding for criminal prosecution.